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T: 1800 AUSCRIPT (1800 287 274)

F: 1300 739 037

E: clientservices@auscript.com.au

W: www.auscript.com.au



TRANSCRIPT OF PROCEEDINGS

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THE HONOURABLE MARGARET WHITE AO, Commissioner

MR JC BELL QC, Counsel Assisting

MR T PINCUS, Counsel Assisting

IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950

COMMISSIONS OF INQUIRY ORDER (No.1) 2013

QUEENSLAND RACING COMMISSION OF INQUIRY

BRISBANE

10.00 AM, THURSDAY, 19 SEPTEMBER 2013

Continued from 15.7.13

DAY 2

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

RESUMED

[10.00 am]

5 COMMISSIONER WHITE: Mr Bell.

MR J.C. BELL QC: Commissioner, the inquiry into the matters raised by the terms
of reference commenced on the 1st of July. 162 people and entities have produced
200,000 documents to the Commission. The Commission continues to work
diligently to identify relevant information contained in them. That task is ongoing.
10 For example, there are a substantial number of emails of Queensland Racing Limited
and Racing Queensland Limited which are in the process of being reviewed now.
More than 100 statements have been provided to the Commission. Nearly all of
them are available to members of the public on the Commission website. Two
statements and one exhibit from another statement have not been published as the
15 Commission determined that those documents contain submissions, rather than
evidence.

In addition, two informal discussions which individuals and legal representatives had
with the Commission. The Commission has conducted 15 interviews with potential
20 witnesses. Where those persons could be provide information which was considered
relevant or potentially relevant has been reduced to a statement and been published
on the website. I emphasise now that the Commission's publication of the
statements on its website is to permit their scrutiny and encourage the provision of
material in response by other witnesses and members of the public with knowledge
25 of the relevant facts. The Commission seeks to conduct this inquiry in an open
manner and that publication should be seen as part of the process of holding public
hearings.

The Commission does not propose now to go through a process of formally tendering
30 in evidence the statements received and to receive piecemeal objections to them. It is
neither feasible in the time available nor necessary. Rather, those statements
published on the website constitute material which the Commission will take into
account as it considers appropriate. In doing so, it will take into account other
material received including during these hearings which may well contradict or
35 disprove contentions made in the existing statements.

It will also receive submissions in due course about matters alleged which are said to
be irrelevant or which should be given little or no weight. All persons accessing the
statements, including the members of the press, should note that the publication of
40 the statements does not in any way indicate that their contents have been accepted as
true or even as relevant to the inquiry. Indeed, the Commission has received and
investigated a variety of allegations which appear to be nothing more than rumour,
innuendo or uninformed gossip. In short, nothing in the statements should be taken
as proved unless and until it is the subject of findings in the ultimate report of the
45 inquiry.

Commissioner, on the 15th of July in your opening statement, you observed that this inquiry bore little resemblance to a trial in a court. You indicated that the Commission began with no views about the issues raised in the terms of reference and noted that the role of counsel assisting is not adversarial. You made this – you
5 made clear that no finding would be made adverse to an individual or corporation unless appropriate opportunity was given to those persons to be heard in relation to the matter. I wish to reaffirm that commitment as the Commission now commences these public hearings. Further, this is only one stage of an ongoing inquiry. An open invitation has been made and is made again to all concerned, including the witnesses
10 to be examined here, to provide the Commission with further relevant evidence by providing statements and documents. It is proposed that the opportunity to do so will remain until the 11th of October.

As indicated in the Commission's practice guideline, submissions generally will be
15 provided by any person with leave to appear until the 11th of October and otherwise as directed by you, Commissioner. Depending on the matters already addressed in evidence and the submissions received, the Commission may provide draft findings on some subjects for response by people who may be adversely affected by them. It is not intended during these public hearings and again would not be feasible or
20 sensible in the time available to us to attempt to air every relevant issue raised in the statements or other material considered by the Commission. Instead, our intention is to focus on exploring some matters of interest which have, so far, been identified where we consider that exploratory questioning of witnesses may assist the investigation.

25 There are five particular areas which we propose to investigate more fully with relevant witnesses who have been summoned to appear. I will outline these matters in broad terms now. Although the outline should provide some guidance as to the topics to be explored, the inquiry remains an ongoing process and what follows
30 cannot be taken as somehow fixing or confining the scope of our investigations. The inquiry is into events which occurred during the period commencing on the 1st of January 2007 and finishing on the 30th of April 2012. During this period, although the control bodies of the three codes of racing in Queensland changed, some board members and senior executives remained throughout.

35 On 1 July 2010, Racing Queensland Limited became the control body of all three codes. This was the first time that such an amalgamation had occurred in Queensland. Prior to that, from 1 July 2006, a different company, Queensland Racing Limited, was the control body for thoroughbred racing. Harness Racing was
40 controlled by Queensland Harness Racing Board from the commencement of the relevant period to the 30th of June 2008. Thereafter, until the amalgamation in July 2010, it was controlled by Queensland Harness Racing Limited. For greyhounds, it was Greyhound Racing Authority and, from 1st July 2008, Greyhounds Queensland Limited to the amalgamation.

45 The amalgamation of the three codes of racing came about through amendments made to the Racing Act in early June 2010. The terms of reference bring into focus

5 the governance and management of the control bodies during the relevant period. It necessarily follows that the persons who held board positions and senior executive positions are likely to know most about the subject of the inquiry. Hence, they make up many of the witnesses to be called at these public hearings. A full list is available on the Commission's website. Mr Bentley, the chairman of Queensland Racing Limited and later Racing Queensland Limited, is to be the first witness. I then intend to examine Mr Hanmer and Mr Ludwig who were directors of those companies throughout the relevant period until their resignation with Mr Bentley on the 30th of April 2012, the last day of the relevant period.

10 The Commission has served a requirement to appear on other directors of Racing Queensland, namely Mr Lette, Mr Ryan, Mr Milner, Ms Watson, Mr Lambert and Mr Andrews. Whether it is necessary to call them all or any of them will depend on the evidence received from the first three directors examined. The executive management personnel who have been required by summons to appear at the public hearings are Mr Tuttle, Mr Orchard, Mr Brennan and Ms Reid, formally Ms Murray. They are the people expressly named in the terms of reference. They also had involvement in events which other terms of reference include, particularly Mr Tuttle and Mr Brennan, concerning procurement.

20 Ms Reid was the company secretary and legal officer of Racing Queensland and previously Queensland Racing. She was involved in that capacity and events relevant to a number of the terms of reference. It is yet to be determined whether her health is such that she'll be able to appear and be questioned. Mr Snowdon has been summoned to appear for questioning in relation to procurement related matters. He was initially a consultant to Racing Queensland and then employed as project director of the Industry Infrastructure Plan from July 2011. Mr Thompson of Contour Consulting Engineers has been summoned as to that firm's role in various projects undertaken by Queensland Racing and Racing Queensland. Again, the evidence given by earlier witnesses will determine whether and the extent to which Mr Snowdon and Mr Thomson need to be examined. The terms of reference also require inquiry into government oversight of the control bodies.

35 The Commission has summoned each of the responsible ministers during the relevant period: Mr Fraser, Mr Lawlor and Mr Mulherin MP. The Commission has also required Mr Kelly and Ms Perrett to appear because they held senior positions in the Office of Racing throughout the relevant period and were much involved with the relevant events. I will now identify the areas, Commissioner, which we will bring into focus during these public hearings. We have of course had the ambit and scope of the terms of reference in mind at all times and will continue to do so. But occasionally, to provide context and to understand the issues which confronted the control bodies from 2007, it may be necessary to refer to events prior to the 1st of January 2007. Commissioner, at all relevant times since privatisation of the TAB in Queensland in 1999, TattsBet Limited conducted a wagering business in Queensland. I'll simply call it Tatts although its name changed over time from TAB Queensland Limited to UNiTAB Limited and then to TattsBet Limited.

In that wagering business, Tatts used Australian racing information which was information which was available to the control bodies to be supplied to Tatts. On the 9th of June 1999, the control bodies for the three codes of racing entered into a written agreement with Tatts named The Product and Program Agreement.

5 Throughout the relevant period, revenue was paid by Tatts to the control bodies pursuant to the agreement. Indeed, most of the revenue of the control bodies came from this source. A company named Queensland Race Product Co Limited was also a party to the agreement. Prior to 2010, the three control bodies held the power to appoint the six directors of Product Co.

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The three control bodies held the power to appoint the six directors of Product Co. At any time four directors were to be appointed by the thoroughbred control body and one director was appointed by each of the harness racing and greyhound control bodies. After 2010 the directors were appointed solely by Racing Queensland Limited. Product Co, Commissioner, was the agent of the three control bodies for dealing with Tatts under the Product and Program Agreement. Product Co, with the control bodies, was obliged to supply Tatts with racing information in relation to all three codes of racing and for racing throughout Australia. In exchange, Tatts was obliged to pay to Product Co a fee which, by the relevant period, represented 39 per cent of its gross wagering revenue.

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A TAB however named operated in each state and territory in broadly the same fashion. In due course, other wagering operators commenced business throughout Australia and in particular on the internet. Those operators were making no financial contribution to racing in Australia yet they were relied upon the industry to hold the race meetings so their wagering business could operate. From about 2005, commencing in Victoria, all the states and territories except the Northern Territory, introduced what was described as Race Fields Legislation. This was intended to capture these other wagering operators and to make them contribute to the industry.

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The legislation involved making it illegal to publish or use Race Field's information in a wagering operation without holding a license. Such a license required the wagering operator to pay a percentage of its turnover or revenue to each state's control body. Initially, the interstate control bodies did not require Tatts to pay fees for their wagering license in accordance with what was known as the gentlemen's agreement. However, by 2008 New South Wales commenced to impose the licensing fee on Tatts for the use of New South Wales Race Fields information and its wagering operation. In due course, other states including Queensland by amendment to the Racing Act followed.

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Since Tatts already paid a fee under the Product and Program Agreement to Product Co for the Queensland control bodies it was not required to pay a further fee in Queensland pursuant to that legislation. The charges imposed on Tatts by the interstate control bodies as for the other wagering operators were substantial. Indeed, during the relevant period Tatts was collectively charged in the order of \$91,000,000. The importance to the inquiry of this background comes about because Tatts passed on those charges to Product Co; the agent of the Queensland control

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bodies. Tatts deducted the fees it was required to pay interstate from the 39 per cent share of its revenue paid to Product Co.

5 Queensland Racing gave consideration to whether Tatts was legally entitled to make that deduction. On the 18th of November 2008, Queensland Racing received written
advice from its solicitor, Mr Grace, on the question. The substance of the advice was
that Tatts was not entitled to make the deduction. The board members of Queensland
Racing Limited and those of Product Co received the advice. Nevertheless, they
10 allowed Tatts to make and continue to make the deduction throughout the whole of
the period of this inquiry to the tune of \$91,000,000. The Commission intends to
inquire in this public hearing as to why this occurred and how it was that no action
was taken by the boards' on that advice.

15 By not doing so the question must be asked; did the directors of each of the control
bodies and Product Co act in good faith and in the best interests of Product Co and
necessarily, the thoroughbred, harness and dog racing industries. The Commission
will also inquire whether any of those directors were influenced by any conflict of
interest or duty to account for their inaction over these significant deductions from
20 Queensland racing revenue stream. Mr Bentley was a director of Tatts during the
whole of the relevant period. Obviously, it would be his duty to advance the interests
of Tatts on this issue. The Commission will inquiry into whether that conflict was
properly managed.

25 Now, the question of whether the thrust of Mr Grace's advice was correct, namely
that Tatts was not entitled to make the deductions it made, can only be finally
determined by a court with the jurisdiction to do so and only if proceedings are
commenced by Product Co, a control body, or indeed by Tatts itself for a declaration
that it was entitled to deduct these interstate fees. To date that has not occurred.
30 However, it is proper to note that after careful deliberation the Commission considers
the argument compelling that Tatts was not entitled, in law, to make those substantial
deductions and that Mr Grace's advice in 2008 was correct. Arguably then, Tatts has
been permitted to deprive the racing industry in Queensland of some \$91,000,000
during the relevant period and more since.

35 When Mr Grace's advice became known to the boards of Queensland Racing and
Product Co, two directors agitated for action: Mr Andrews and Mr Lambert. They
continued to agitate throughout 2009; however, by December 2009 Mr Andrews and
Mr Lambert ceased to be directors of Queensland Racing and Product Co. Whether
40 this occurred because other directors failed to act in good faith or in accordance with
their duty or were influenced by a conflict will be investigated here. Commissioner,
the commission will also investigate during the public hearings the procurement
policies, processes and guidelines in place within Queensland Racing during the
relevant period.

45 The terms of the purchasing policy of Queensland Racing and, later, Racing
Queensland must have been very confusing to all concerned. Those policies have
been difficult to understand. They contain internal contradictions. It is quite unclear

5 as to what can be understood from the policies, how they are to be applied, for example, to services provided by Contour Consulting Engineers, mentioned in the terms of reference during the relevant period. Queensland Racing Limited and Racing Queensland Limited, on the present evidence available, seem to have made no attempt themselves to apply the policies, at least in respect of the larger projects undertaken.

10 There also seems to have been no consideration given to their application to the engagement of Contour, at least until late 2011. Contour did itself conduct some competitive procurement processes for the most significant subcontractors; for example, civil construction work contracts went to tender. However, these processes were not conducted in accordance with Racing Queensland procurement policy. Indeed, Contour's directors deny any knowledge of the policy of Queensland Racing or Racing Queensland until late 2011. These issues will be matters for further
15 inquiry during these public hearings. There have been allegations in the press to the effect that Contour was awarded either 150 million or 20 million worth of contracts without tender.

20 It is clear that those figures have been greatly exaggerated, and Contour, in fact, earned something like \$5.5 million from what was extensive and ongoing Queensland Racing and Racing Queensland work during more than five years of the relevant period. It is important to note that the responsibility to ensure that the procurement policy was complied with was not that of Contour, or of any other consultant or contractor engaged on infrastructure projects, but of the relevant
25 entities. The point of the procurement policy was to ensure that value was obtained and that the process was transparent. Where the policy was not followed and has not been followed, it is now difficult or impossible to determine retrospectively whether value for money was achieved or not.

30 That is the whole point of having the policies. On some projects, Contour was retained to manage the project and also to provide other services on the same project. Contour was involved in the industry infrastructure plan in developing business cases for work in which they would be involved as consultants and contractors. The commission will explore how the relevant entities sought to manage the apparent
35 conflicts involved in Contour's multiple roles. Funding deeds were entered between the state and the relevant entities, setting out the terms on which government funding was to be provided for infrastructure projects.

40 There seems to have been lack of compliance with requirements contained in those deeds in relation to the installation of synthetic tracks in 2007 to 2009 and subsequently in relation to the industry infrastructure plan in 2011 in respect of procurement and payment processes and reporting to government. Commissioner, the commission will investigate the renegotiation of employment contracts for four most senior executives of Racing Queensland Limited, namely, for Mr Tuttle, Mr
45 Orchard, Mr Brennan and Ms Reid. Those persons were offered new terms on the 5th of August 2011.

5 The variations amounted to a 30 per cent increase in their pay in each case but importantly also a right, which did not exist before, to terminate their employment and receive all redundancy benefits, severance pay etcetera should the government change at the forthcoming election. This change meant that each of the key executives were entitled to elect to leave Racing Queensland in circumstances – in those circumstances with an increase in benefit with – which the commission has calculated as follows: for Mr Tuttle, \$553,000, for Mr Orchard, \$363,000, for Mr Brennan, \$320,000 and for Ms Reid, \$198,000. Of course, what did occur was that the election was lost and the government did change and all four terminated on the Monday after the election on Saturday, the 26th of March 2012.

15 Further, the chairman, Mr Bentley, as he was entitled to do under the new terms of employment, waived the requirement for each employee to give seven days notice. Thus, the company lost its most senior executives and most important employees – its CEO, its legal officer, its integrity director and its product development officer – at the same time and without the benefit of handover to those who would take over their roles. During these public hearings, Commissioner, the commission will seek to investigate why these new contracts were offered and how the offers could be said to be in the best interests of Racing Queensland.

20 Why was the chairman minded to grant a waiver of the requirement in each case for seven days notice of termination, and how was that in the best interests of the company? Commissioner, the commission has investigated the management policies, processes and guidelines and the workplace culture and practices of the relevant entities, particularly Racing Queensland Limited, since it was the governing body on the 1st of July 2010. The management issues arising for examination include whether the chairman, Mr Bentley, was active in the day-to-day business of Queensland Racing Limited and then Racing Queensland Limited to an extent which was not appropriate for a chairman.

30 There will also be some exploration of whether the directors acted in accordance with Racing Queensland's code of conduct, including in relation to changes in the make-up of the board and the use of proxy votes. The commission has investigated the corporate governance arrangements of Racing Queensland Limited, including whether its directors acted with integrity and in the best interests of the company and the racing industry, whether there was compliance with the Racing Act 2002 and the Corporations Act 2001 and whether conflicts of interest were appropriately managed generally. These issues arise for attention in the context of various other issues for inquiry during the Racing Queensland period noted above.

40 They will include consideration of events surrounding the dismissal of Ms Kerry Watson as a director of Racing Queensland in December 2010. This occurred as a response to her letter to Mr Bentley, copying Mr Kelly of the Office of Racing and Minister Lawlor, and raising concerns about the industry infrastructure plan. This gives rise to a question: was the dismissal done with integrity and in the best interests of the industry? Commissioner, there are matters for inquiry in the public hearings in respect of the oversight undertaken of the racing control bodies during

the relevant period by the three relevant responsible ministers: Mr Fraser, Mr Lawlor and Mr Mulherrin MP.

5 Mr Fraser was treasurer during the period September 2007 to March 2012 and also minister responsible for the racing portfolio until March 2009. He considered a number of issues of importance during his time as minister. In 2008, a question arose in relation to the integrity of one director, Mr Ludwig. The complaint made to the minister was that Mr Ludwig had voted as proxy for a committee constituted under the Racing Act without first obtaining the authority of the committee to be proxy and without a meeting of the committee to discuss the subject of the vote. Mr Fraser referred the matter to the CMC and ASIC. Each body concluded that it did not have jurisdiction to consider the matter. Queensland Police investigated and concluded there was insufficient evidence to prosecute a charge of fraud.

15 However, despite the powers in the Racing Act and the suggestion of ASIC that they be used, Mr Fraser did not elect to use them. Why? Mr Fraser was the responsible minister at the time when oversight questions arose in relation to the installation of synthetic racetracks. He was involved as treasurer in authorising, just before the commencement of the caretaker period in February 2012, the much publicised release of Industry Infrastructure Plan funds to Racing Queensland. The Commission is specifically asked to inquire into the events surrounding the release of these funds.

25 Mr Lawlor was the responsible minister from March 2009 until February 2011 and was involved in securing the commitment of government to redirect \$80 million which rose later to \$110 million of wagering tax revenue for the improvement of the racing industry infrastructure. He also approved the new constitution for Racing Queensland Limited as the amalgamated control body for the three codes of racing in 2010. The approach to this issue requires investigation. Mr Mulherin was Minister for Racing from the 21st of February 2011 until the change of government on the 26th of March 2012. His responsibility covers the period of the development of the Industry Infrastructure Plan and funding deeds made under it from the middle of 2011 and the transfer of funds in February and March 2012.

35 The Commission will explore with him the degree of government oversight in relation to those matters generally and, in particular, will seek to understand the circumstances of his announcement on the 1st of February 2012 while negotiation of the funding deed for the \$8.2 million upgrade of Beaudesert facilities was still underway and the required business case was still being considered by treasury that upgrades would start before the end of the month. The inquiry must also involve the role of oversight undertaken by the Chief Executive of the relevant department which necessarily involved the Office of Racing. This inquiry involved senior members of the office who had powers delegated to them and played lead roles in the relevant events throughout Mr Kelly and Ms Perrett.

45 In particular, the role played by the office in assessing the conditions to be imposed by the minister and their advise to him in relation to the constitution to be adopted as

5 appropriate for Racing Queensland. Similarly, Mr Kelly and Ms Perrett were involved with the proposed amendments in 2008 to the constitution of Queensland Racing Limited and the response to the allegations of unlawful or invalid use of a proxy by Mr Ludwig. They were also involved with Racing Queensland seeking to comply with government conditions for the Industry Infrastructure Plan in late 2011, early 2012. The Commission is concerned to understand how they saw their role and the way they performed it.

10 Commissioner, I now conclude by mentioning matters of procedure for the public hearings. Correspondence has been entered into with legal representatives of people who have been given leave to appear. The Commission has notified each of those persons that the principal criterion that you have indicated that you will observe in exercising your powers in the conduct of the public hearings is the extent to which, in your judgment, the witness can help the inquiry. Your powers include
15 determining which witnesses are to be called, to what extent their evidence will be directed, whether or not examination will be allowed of any witness, there is no legal right to examine any witness and how the witnesses will be examined, bearing in mind the inquisitorial nature of this inquiry.

20 With the principal criterion of assistance to the inquiry in mind, you have determined the applications made on behalf of all parties who have the leave to appear as to who will be allowed to examine witnesses and on what topics. You have also determined applications for the Commission to call other witnesses who have provided statements. Your determinations have been communicated to all relevant parties. It
25 is appreciated that persons representing particular parties may wish to reapply once they've heard evidence from different witnesses when they are examined. I propose, Commissioner, that the process for any such application is to notify counsel assisting, the Commission, so that appropriate time can be allocated for you to consider it.

30 However, it should be emphasised that it is for the Commission and not the parties to determine what is important to be examined during the course of the public hearings. The hearings are not the opportunity for parties to seek to address matters which they consider may be the subject of findings in due course which are adverse to them. To
35 the extent that such matters are not already addressed by statements and are not addressed during examination, that opportunity will be given later. Commissioner, on the list on the website I have included Murray Procter as one person to be called. I've now made the judgment to dismiss that requirement as he has provided a detailed statement which is available on the website.

40 COMMISSIONER WHITE: Thanks, Mr Bell.

MR BELL: Commissioner, the first witness is Mr Bentley.

45 COMMISSIONER WHITE: Mr Bentley, would you come forward please. Thank you.

ROBERT GEOFFREY BENTLEY, SWORN

[10.38 am]

EXAMINATION-IN-CHIEF BY MR BELL

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MR BELL: Your full name is Robert Geoffrey Bentley?---That's correct.

10 Mr Bentley, you swore a statement for the Commission on the 26th of July 2013?---That's correct.

And another statement, a supplementary statement, on the 11th of September this year?---That's correct.

15 In 2002, you were appointed chairman of Queensland Thoroughbred Racing Board?---That's correct.

And in 2006, chairman of Queensland Racing Limited?---Yes.

20 2010, as chairman of Racing Queensland Limited until the 30th of April 2012?---That's correct.

Mr Bentley, you received a requirement to produce relevant documents from the Commission?---Yes. I did.

25

And you responded to it?---I have.

30 In that response, you produced board papers, some letters, some legal advice and five emails. Do you remember that?---I remember producing documents. I don't remember specifically what they were or what quantity.

35 Well, I'll tell you there were five emails. I wanted to ask you whether that's the extent of the emails that you retain of matters during the relevant period?---Yes. That's correct. Anything I had – I mainly left everything behind at the board at the time.

You used, during the relevant period, a private email address, crosmore13@yahoo.co.uk?---That's correct.

40 Do you still use that email address?---I do.

45 Do you have a hard drive at home that would still have your emails on it that you were sending and receiving from that address?---I'm not sure. I've got a new computer. I turned the other computer in.

Do you have a hard drive at home that was the one you used during the relevant period?---No. I don't have anything at home.

What happened to it, Mr Bentley?---I returned it to Racing Queensland as far as I know.

5 Is that the one that has crosmore13 address on it?---Yeah. I think so. Yeah. Well, I only ever used one computer. I haven't got two computers.

Mr Bentley, Mr Lawson who represents Mr Thompson and Contour Consulting Engineers has been given leave to ask you some questions so I'll sit down and let him do that now.

10

WITNESS: Thank you.

COMMISSIONER WHITE: Could I mention, Mr Bentley, for your convenience that I propose to take a short break at 11.30 - - -?---Yes.

15

- - - for about 15 minutes, but if you want a break before then, would you let me know?---I'm going okay. Thank you, your Honour.

All right. And I actually think the sound system is quite reasonable in here so if you want to sit back in your chair - - -?---Okay. Thank you. That makes it more comfortable.

20

- - - you can do that. It's much more comfortable. All right. Thank you. And if there's anything you need while your questions are being asked, you can just raise it with me?---Thank you.

25

All right. Thank you. Mr Lawson.

MR R.N. LAWSON: Commissioner, I might ask if I could reserve my questioning until Mr Bentley's been examined more thoroughly because some of the issues may be covered off and be unnecessary, but I'd like to reserve the examination until a later time – the primary examination.

30

COMMISSIONER WHITE: And what do you call the primary examination?

35

MR LAWSON: Well, the examination-in-chief by counsel assisting.

COMMISSIONER WHITE: Counsel assisting is going last on the whole or it may be that Mr Wilson who represents Mr Bentley may need to raise something in response to counsel assisting, but this is your chance to ask questions.

40

MR LAWSON: All right. Well, I have no questions at this time.

COMMISSIONER WHITE: All right.

45

MR LAWSON: Thank you.

COMMISSIONER WHITE: Thanks, Mr Lawson.

MR BELL: Thank you, Commissioner. Could Mr Bentley have volume 1 of the documents I've prepared for him, please.

5 COMMISSIONER WHITE: Yes. Thank you. If you need any assistance finding any documents in that bundle. I hope they're clear - - - - -?---Thank you.

10 - - - but there are always slips - - -?---I'll have a go at it.

- - - then either of the young ladies who are assisting me will help you.

MR BELL: Mr Bentley, the numbering on the dividers is complicated in the sense that it's a mess. So I'm going to offer to you to ask for assistance to find a document when I refer you to the tab number. Okay. So - - -

15 WITNESS: That's the numbers down the side. Is that correct?

MR BELL: That's right.

20 WITNESS: Thank you.

MR BELL: The first document I want you to go to, please, is the document which is at divider 233. It's about four in, please?---Is that the indemnity?

25 It's titled Deed of Indemnity - - -?---Yes.

- - - Insurance and Access. Do you have it?---Yes. I do.

30 Would you go to the last page of it, please?---Yes.

Do you see your signature there?---No. I don't.

35 On page - - -?---Yes. I do. I'm sorry. I do. At the bottom, yes.

Yes. On page 13, you've signed, on your own behalf, this deed, haven't you?---Yes. I have.

40 Yes. And Mr Milner, your co-director, has signed on behalf of Racing Queensland Limited. Do you see that?---Yes.

Go to the front page and then turn in one, please, to page, what is numbered in the bottom right-hand corner, 1. Do you see that?---Yes.

45 This deed appears to have been signed on the 5th of August 2011 by reference to the top of the page, doesn't it?---Yes.

And it was a deed that was reviewed before signing in about July and August 2011 before its signature?---I can't comment on those dates.

5 Okay?---I'd say that I don't really understand where you're coming from.

Okay. Have a look at the recitals. Recital B, the deed concerned an agreement between you as a director and Racing Queensland for it to indemnify you in respect of liabilities incurred by you while acting as director?---Yes. I understand that's -- that's the intent.

10 And also the agreement involved the company, Racing Queensland, promising to provide you with reasonable arrangements for insurance?---Yes.

And the obligation that this deed created was for Racing Queensland to take out insurance to cover you for legal expenses and other liabilities -- -?---That was it.

15 - - - should they arise?---That was the intent.

And it, in fact, in clause 1.1, if you look at it, please, you'd see there that the obligation on Racing Queensland that this deed created was that to the maximum extent permitted by law, Racing Queensland agreed to indemnify you against all liabilities incurred by you as director?---Yes.

20 And it also agreed by this deed to indemnify you against all legal costs and other costs and expenses arising from proceedings or an investigation, didn't it?---Yes.

25 And then if I ask you, please, to turn over the page to 1.3, the deed caused the indemnity to continue in full force and effect without limitation in point of time in relation to those liabilities?---That's what it says -- 1.3.

30 Yes. And then if I ask you to turn the page to clause 2: advances of legal fees, in (a) to the maximum extent permitted by law, the company will pay on behalf of you the amount necessary to pay legal costs incurrent in defending an action. See that?---Yes. I do.

35 And the same in (b) must repay legal fees if they become legal costs for which the company was not permitted by law to indemnify?---Yes.

40 And then in 3.1(a) to the maximum extent permitted by law, Racing Queensland will obtain and maintain in full force and effect insurance cover covering you?---Yes.

And it is by way of this deed that your legal fees for this inquiry are being paid, isn't it?---As far as I know. Yeah. That's correct.

45 Well, you would know, because you'd be paying them otherwise yourself, you see, and that's not happening, is it?---No.

5 Okay. So this matter was one that had concerned you for some time before the 5th of August 2011, wasn't it?---I – no. As far as I'm concerned with that deed of indemnity, I mean it's a normal practice to keep upgrading your deed of indemnity to make sure it's correct. I mean all directors are entitled to do that.

Let's think about my question. This matter of the indemnity was something that had concerned you for some time leading up to the 5th of August 2011, wasn't it?---I think it's fair to say that – I mean that it – I – indemnity right through the whole period since 2002 concerned me.

10 Okay. So the answer's yes?---I mean it's a very volatile situation that Racing Queensland works under.

So the answer's yes, is it, Mr Bentley?---Yes.

15 Okay. And in fact, you had, on the same day that you signed this deed of indemnity, you signed the offers to the employees for better terms of employment, didn't you?---I will take – take it as read that you – you have the dates. I'm not sure of the dates - - -

20 Okay?--- - - - but if you say that that's correct, I mean I'm not going to dispute it.

Well, you think about it, because it's important what you think. You see, on the 5th of August 2011, I know because of this deed that you signed an indemnity that the company – you signed this deed that required Racing Queensland to indemnify you for liability. And the point I'm making is on the same day, the 5th of August 2011, you caused each of those four employees that I mentioned before in the opening to have much better terms of employment given to them?---That's correct.

30 Okay. And not only that, in relation to the granting of those four employees new terms of employment, you were concerned that it might cause you to be liable should you be in breach of your duty?---I don't necessarily agree with that. It was the only reason.

35 Okay. But that's one reason, is it?---I mean I think that any decision that you make going through – through the time as a director that you must be aware and – and cognisant of this sort of thing. Yeah.

Coming back to the focus - - -?---But I don't think there's any link.

40 Come back to my question, then. Was this one of the reasons that you signed this deed of indemnity on the 5th of August 2011?---No. I don't – I don't consider it was.

45 So you say no?---No. I think it was – it was part of what we were – what we were doing.

Well - - -?---Naturally, I mean if we're making a decision of that magnitude we'd want to make sure that we were covered in the event that something went wrong.

5 Okay. So I'm not really getting a straight answer, I'm suggesting to you. On - - -?---Well, that's - - -

Just wait. On the one hand you're saying, "No, not really," and on the other hand you're saying, "Yes, of course"?---Yes, of course. I mean we're cognisant of all these sort of things that happen. I mean we signed a fairly substantial document
10 around about that period; I don't know whether it was the date. Yes. I mean we wanted to make sure that we were covered.

Okay?---There was - there was some doubt.

15 Why were you concerned about what you had given to these four employees as a board on the 5th of August 2011?---Well, it was a fairly substantial decision that we'd made, and we wanted to make sure that - I mean going forward, that if there was any trouble or it was going to be queried, that we would be covered.

20 Did you suspect that you had gone too far?---No.

Did you suspect there was a risk that you'd gone too far?---We suspected - I mean that - after the - had the government changed, that - I mean that this very thing may very well happen. Because if you remember, we went through the Daubney/Rafter
25 Inquiry and the Shanahan Inquiry and our detractors are very skilled at doing this sort of thing.

Just while we're on that, did you read the Shanahan report after that inquiry?---Yes. I did.

30 Was any of the recommendations in it carried out?---I'm sorry. I couldn't - wouldn't say - yes. There was one - one I know particularly.

What was that?---That was the separation of integrity.

35 But you were against that, weren't you, that separation?---No.

You made public many times that you were against that?---No. I don't think so.

40 Okay. We'll come back to that. Mr Bentley, would you please go to tab 236, please. Tell me if you have it?---It is a - from Mark Waller.

Yes. There's a email from Mark Waller. Do you see that email?---Yes.

45 Indeed, underneath it you'll see there's a email from Barry Dunphy to Mark Waller. It's 5 July 2011 at 1.38 pm. Have you got that one? It's about a quarter of the way down the page?---1.38 - is that the one? Yep.

Yeah. 1.38 – that’s right?---Right.

Just have a read of that and I’ll ask you a question about it, please?---Yes.

5 Dunphy was retained to review the deed by you, wasn’t he?---I gave instructions.
Yes.

And he records, “Racing Queensland have asked for an extremely urgent review of
this D&O Insurance coverage”?---Well, I’ve asked for that. I don’t recall saying it
10 was urgent. I was – I certainly asked for review.

And you see in the last sentence of the email, Dunphy records, “I will also send you a
copy of an earlier advice that we sent to Racing Queensland about the potential risk
for the directors under the Corporations Act if they inappropriately escalated the
15 entitlements of existing senior staff”?---Yes. I remember him saying that to me.

And he said that to you. Dunphy said that to you at an earlier point?---Yeah. I’m
sure – yeah. We had a meeting. Yes. He said you need to be extremely careful – in
these words – you need to be extremely careful what you do. You don’t want to – to
20 contravene the Corporations Act.

And in particular, you were concerned to ensure that if you had contravened the Act,
your liability was covered by the deed I first took you to, weren’t you?---No. That
wasn’t the – that wasn’t the reason. We wanted to make sure that we were covered.
25 I mean we didn’t – anything we did we weren’t going to deliberately go out and
contravene the Corporations Act. That is for sure.

Mr Bentley, you knew there was a risk and that’s why you asked him to urgently
review the D&O policy?---He – I was aware of his advice: to make sure that
30 whatever you do, you don’t contravene the Corporations Act. Yes. I asked him to
review the D&O insurance.

Because there was a risk in your mind?---There’s – as I said before, counsel, there is
always a risk in everything you do. But this – we had been warned – not warned, but
35 we’d been advised by Barry Dunphy to be very careful what we did.

Okay. In February 2011, you asked Mr Grace to review the policy, the insurance
policy covering your liability, because you were conscious of the risk of another
inquiry like the Daubney/Rafter Inquiry?---Yes. I think that’s fair to say, but that
40 - - -

You recall receiving a letter from Mr Grace saying that to you in about February
'11?---No. I don’t.

45 Okay. Let’s have a look at document – at 234, please, which is the first one, I think,
in the bundle?---I have that open. Is it the 8th of February?

5 Yes. Yes. First two paragraphs, you see, he's writing to you and he says, "I refer to our recent discussions and to your inquiry in relation to the directors and officers liability cover and its adequacy. In particular, you were concerned that there may be another inquiry in the future and if that is the case, you want to ensure that your cover of a company and for directors is adequate"?---That's correct.

10 Mr Bentley, your point is that you anticipated that this industry would continue with its tradition of having an inquiry at the end of your reign as chairman, is that right?---Correct.

15 And I suggest to you that you were concerned to ensure that if there was another inquiry and you were found to have breached your duty that you would not suffer financial outcome from that?---Well, that's what the D&O insurance cover is about and we – what you say is correct. We – we're all under no illusions that, I mean that, with all the adverse publicity to be going on, that I mean, that there would be an inquiry, yes.

20 Now, I want to ask you some questions about TAB or Tatts – if I can call it Tatts so that we don't have to be precise in time. Is that fair?---That's fair.

25 Okay. On the 1st of October 1998 you were appointed to the board of TABQ or Tatts, I'm going to call it?---Yes.

30 And that was after the election of the Labor Government in June 1998?---That's correct. There was a government – GOC.

35 And you remained as a director of the board until after privatisation?---Yes. I went through all the transitions up to privatisation and through privatisation. Yes, that's correct.

40 And in June 1999 the government announced privatisation. Do you recall about that time that happening?---Yes.

45 And the 9th of June 1999, Tatts or TAB entered into the Product and Program Agreement?---Yes.

Did you play a role for Tatts in that?---No.

40 Why not?---Because I have a conflict. I'm Racing Queensland.

No, no, no. You weren't appointed at that time?---Oh, I'm sorry. No. No, I didn't. I mean that was done by the executive staff.

45 I see. But you must have approved it at board level because it was fundamentally important to Tatts' business, wasn't it?---Yes.

Did you approve it at board level?---I suspect that I would've, yes. I can't – without the documents I couldn't tell you. But yes I would.

5 It goes without saying really, doesn't it?---Yes.

In 1999 at the time that, that agreement was entered into, the consequence of it was that Tatts would be paying to the control bodies in Queensland up to about 40 per cent of its revenue?---39 per cent. That's correct.

10 I said up to about 40 – that's not bad, was it?---Close.

Okay. And you must have considered the terms of the Product and Program Agreement at that time and received information about it from the executive of Tatts?---Yes. There would've been – there would've been a board paper on it. But I don't have access to that of course but I would've – suspect that, that's how it would've happened.

15 Yes. And I'm right in saying that the decision to enter into it was important to Tatts' business, of course?---Yes. It is an important part of Tatts business.

20 In particular, do you recall that, that agreement involved the control bodies of Queensland Racing three codes supplying to Tatts the Australian racing information?---Yes. That's a fundamental part of it.

25 Australian racing product, Queensland racing calendar and Queensland racing program?---That's correct.

And as I said, the revenue share that would come from Tatts to the control bodies climbed over time to 39 per cent after four years, I think?---Correct.

30 But there were, do you recall, clauses that provided for deductions from that payment?---Yes, indeed.

35 What were they? Not the clauses but what was the substance of the deductions?---The substance of the situation – if Tatts had to source the product to operate on from any other jurisdiction that came at a cost then that was a cost against the – against the revenue of the product program agreement to the industry. I understand that was – that was in the contract.

40 Any other deduction clauses that you can recall?---I can't – can't recall at this stage.

Is that one on the forefront of your mind?---Oh, it's not in the forefront of my mind but it's also – it's been fundamental because mainly – because the breakdown of the gentlemen's agreement which was – had a fairly devastating effect on everybody.

45 Yes?---Especially Queensland.

Yes. On the 1st of July 1999, as we've said, TAB Queensland Limited was registered. You were appointed a director and privatisation occurred for Tatts in August 1999?---I'll take – take it as read are the dates.

5 Okay. And after that time – after privatisation – did you buy shares in Tatts?---Yes, I did.

And did you continue to buy and sell shares from time to time in Tatts?---Yes, I did. Not as a regular trader but I did buy and sell it a couple of times. But different times,
10 I mean, depending on my circumstances.

And did you declare those purchases and sales in accordance with your duties to Tatts?---Yes. Tatts keeps a register of what – what each director has and it's published in the annual report.

15 That's right. I want you to go please to divider 253?---253. I haven't got 3, have I? Oh, it's not in order. Okay.

The entities and person related to you who bought shares in Tatts over time included your wife, yourself and each of you on behalf of the Bob Bentley superannuation fund?---That's correct.

And from the public documents this summary has been prepared. And that's not to say I'm asking you to be bound to it but the documents supporting it I'll give to you
25 so you can check it some time?---I can't check it right now but I'd say they're correct. I mean, that's about the amount of trading I did, yes.

And indeed, your trading continued over time?---Yes.

30 As you see and you remain a shareholder of Tatts now, don't you?---That's correct. And I also trade in other shares as well.

I didn't mention one company, Crossmore Cattle Co Proprietary Limited?---Yes.

35 You bought shares in it too, didn't you?---Yes, I did.

Now, that shareholding that you held from time to time in Tatts, was that relevant in respect of your duties you owed to Queensland Racing and later Racing Queensland?---I don't – I don't see there's any relevance whatsoever.

40 Okay. Thank you?---I mean it's a – its shares held as income for a superannuation fund. They're excellent shares and I can see no reason why – is there any conflict there on me holding shares. I mean 160,000 shares out of – out of billions is nothing. Nothing that I could do there to influence what happens at Tatts.

45

Mr Bentley, your answer is that, that shareholding did not, in your mind, create any difficulties for you as chairman of Queensland Racing or Racing Queensland?---None whatsoever.

5 Okay. In 2002 in April, do you recall the Racing Act became law in Queensland?---Yes.

And at that time you were appointed chairman of Queensland Thoroughbred Racing Board?---Yes.

10

And - - -?---Could I correct that answer?

I'll come to what I think you're going to tell me and then you can correct it if I'm wrong?---Okay, sorry.

15

You were appointed chairman of that board by selection of an independent body?---Correct.

At first another person was appointed chairman but withdrew?---Yes.

20

And after that time you were appointed as a director and chairman?---Correct.

Her name was Merrilee Whitnall?---Yes.

25 And although she was appointed chairman, she withdrew afterwards didn't she?---Yes, she did.

She withdrew because she felt she had a conflict?---Yes.

30 Do you recall that?---I recall she was a solicitor acting on behalf of, I think, Racing Queensland at the time of the negotiations and there was some slip-up in the – in a contract without consideration. Something to that effect. I'm not sure.

35 Was it not that she felt she had a conflict in relation to Tatts? That she had acted for Tatts at privatisation or given them advice?---I don't know.

Okay. Now, do you recall that over time you were involved in developing a constitution for the control body which would take over named Queensland Racing Limited?---Yes, I was.

40

And after that time you were involved in 2009/2010 in developing the constitution for Racing Queensland to take over all three codes?---That's correct.

Can I ask you to go to document at 229, please?---Is that forward of the paper?

45

That's forward, yes?---Yes. I have – now have that document.

5 This document was the first constitution before approval as the control body of Queensland Racing Limited. You can tell that by looking at the front and this was the one that was prepared by Mr Grace and you see on page 8 looking at the top of the page, that the first directors of this company included you?---Yes.

And other people who were then on the board?---Yes.

10 And in particular you will see that the membership of the company were to be determined by the directors. Do you recall that?---Yes. The directors were shareholders while ever – while ever they held office. Is that the – I don't know where the clause is but that was the intent, I think, at that time.

15 Yeah. That's right. And that what happened was to seek approval from the government to have that company be the control body, you entered into negotiations on the basis of this draft with the Office of Racing for a constitution that was acceptable. Do you recall that?---I recall having a hand in doing this. Who I negotiated with, I'm not absolutely sure.

20 Okay?---I don't know whether that's – that was right or wrong.

Turn over to the next document which is at 230, please – number 230?---230. All right. Got it.

25 Have you got that constitution?---Yes. Yep.

This constitution was a constitution that eventually was approved for the constitution of Queensland Racing Limited for it to become the control body of thoroughbred racing in Queensland in 2006?---Yes.

30 Do you recall that?---Yes.

And if I ask you to go to the article or the clause at 15, please. You'll see your name there with the other directors - - -?---Yes.

35 - - - remains – I'm sorry. 15. Did I say - - -?---15.2?

Yeah. 15. And 15.2, you see your name there in (a) and the other directors too?---Yes.

40 And in 17, if I could ask you to go over to that, please, the selection for directors in the future was to be determined in accordance with this part of the constitution?---Yes.

45 There was to be an initial period when – of three years when the present directors of the board would be the directors of this company and then after that this process for selection would arise?---That is correct.

And in particular, if you go to 17.6, you recall that the existence of the class A members which were members of certain parts of the industry became a concern for you, didn't it, as time went on?--Class A members [indistinct] clubs.

5 They were the clubs?--I wouldn't say they became a concern, no.

Well, you tried to get rid of that and did get rid of it in the end - - -?--Yes.

- - - that they have any say in this process?--Do you want a response for that?

10

Yes, please?--I was firmly of the belief at all times that [indistinct] to come onto a board, such as the racing board, that clubs – representatives coming from clubs could not act independently. When they arrived there, they carried the baggage of someone electing them to be there and they followed that right through. I'm firmly of the

15

belief that then and I'm still firmly of the belief that now.

What about the proposition that people who came from a particular code remained with allegiance to it? You felt that too, did you not?--Yes. I did. I did.

20

But indeed when Racing Queensland became the control body for all three codes, they were appointed to act in the best interests of all three codes - - -?--Correct.

- - - but their allegiances remained, as you found out?--I did.

25

Your allegiance remained too, did it?--No.

Okay. We'll come back to that. But in any event, at 17.6(b), there existed the A class members and if you go back to clause 7 you see that - - -?--7?

30

7. You see who they were made up of?--Yes.

And you recall that that was correct that the government had insisted upon those clubs being represented, as members on the board, to have a say in future direction?--Correct.

35

Indeed, in 2008 you sought to have that part of the constitution and the difficulties associated with it, from members remaining, as you thought, focused only upon their own interests, excluded from having a vote?--Could you just repeat that again?

40

Yes. In 2008, you were concerned that the membership which was defined as the class A members would create difficulties for the board going forward?--I think I would agree with that. There was always difficulties with a board that's made up of this particular thing and I was always against that particular situation.

45

And in 2006, when the negotiations with the Office of Racing occurred, were you against it?--I can't – I can only say generally that I was always against the issue of clubs being represented on boards.

Okay.

5 COMMISSIONER WHITE: Could I just intervene and say of course they're not just clubs. There were trainers and breeders, TAB clubs and non-TAB clubs?---Yes, your Honour.

It was a much broader group with the class A members, I think, Mr Bentley?---Yes. That's correct, your Honour.

10 MR BELL: And, Mr Bentley, if you go over, please, to 261.

COMMISSIONER WHITE: He might be a bit challenged by that task. Could you help, please, him.

15 WITNESS: Thank you.

COMMISSIONER WHITE: Is this 261?

20 MR BELL: 261, yes.

COMMISSIONER WHITE: 261 has just been handed to Mr Bentley.

25 MR BELL: It seems, Mr Bentley, from the documents that are available that the Minister Schwarten approved, on conditions, which involved Queensland Racing consulting in relation to the wording of the draft constitution, for example, in 1?---Yes.

30 Was there a consultation about the wording of the constitution that you can recall?---No. I can't recall.

Okay?---But I'd find it difficult that we wouldn't comply with an order from the minister.

35 Now, could I ask you to go back to the book and be challenged again to go to 262, please. I'm going to give you a hand and hand it to you here, Mr Bentley?---Thank you.

You recall that by that letter the minister approved the constitution in its form.

40 COMMISSIONER WHITE: Do you have the document, Mr Wilson?

MR K. WILSON QC: Commissioner, I think the document we've just been given is the same as 261.

45 COMMISSIONER WHITE: [indistinct] not the same as 261. Maybe you have had

MR WILSON: Thank you.

COMMISSIONER WHITE: You've got it now?

5 MR BELL: It seems to be the approval that eventually came forth after compliance with the consultation process?---It's difficult. It was seven years ago - - -

Yes?--- - - - to recall whether this is the document, but I'd have to say - - -

10 No. I'm not suggesting that you remember the document. I'm trying to refresh your memory about the substance of it and I'm interested, you see, in that what happened was you were instrumental in promoting Queensland Racing as a control body with a certain constitution?---Yes.

15 And you had to deal with government in consulting with them about what that constitution would be?---That's correct.

And one of the drivers for you was that you were always against having clubs with a representation in the membership?---It wasn't just all the clubs. It was having that particular model which was very hard for a board to handle. I mean, the nature of the industry was - causes friction, as you can see. That's why we're sitting here today or we're sitting here on the Daubney/Rafter inquiry because everyone's got an opinion and everyone thinks they're right. Very difficult to run.

25 In fact, Mr Bentley, it would seem that the way in which you went about business over the 10 years that you were chairman of the board, Queensland Racing and Racing Queensland, that was something you sought to avoid?---I think I'd answer this in this particular way that when we were first appointed or I was appointed to the board in 2002 by Merri Rose, her doctrine with the government was to get racing away from government. They wanted us to be commercial and run the industry on a commercial basis. Every decision that we made, I feel, during that particular time was aimed at that particular thing and the way the set-up was - the club set-up, it's okay. It goes back to the horse and cart days. Terribly, terribly difficult to progress the industry, as you've seen now, from the infrastructure fund. The governments are giving \$110 million and, what, we're sitting here today arguing about the government giving the industry \$110 million when they're on their knees. Grandstands are falling down and jockeys are running through the outside running rail. So, yes, I was against that particular system.

40 I think, Mr Bentley, the reason for the inquiry and the matters we're investigating isn't so much about what you just said, but more about the way it was gone about. Can we concentrate on the way we went about it - - -?---Okay.

- - - because your philosophy for the industry might be accepted by many people, but the way you went about things might not be so acceptable. So that's why we've got to talk about it?---I'm happy to be here on that basis.

That's good. I'm glad. So let me take you then to 2008 briefly. In 2008, you'll recall that you sought to have this constitution of Queensland Racing changed so that you would get rid of the requirement for an independent recruitment consultant. Do you recall that?---No.

5

Okay. Well, what you did was you promoted, in the sense of putting a motion to the shareholders of Queensland Racing, a new constitution and you got Mr Jackson QC from Sydney and another barrister to give a lengthy advice, promoting the idea that having the independent recruitment consultant as a requirement for selection of a shortlist of future directors was unnecessary and also that the term which had been given to you, meaning to you and the board, as the initial term should be extended further. Do you remember that in 2008?---I remember that, yes. I don't remember the promotion bit, that's all, about getting rid of the independent consultant because I feel that's probably the best way to go.

15

But also to extent the term which involved your term longer than had been first granted to Queensland Racing in 2006?---Yes.

And in fact what happened was the minister rejected the proposal in the end. You'll recall that?---Yes.

20

And it seems at least that an issue had arisen in relation to Mr Ludwig and a proxy issue - - -?---Yeah - - -

- - - at about that time?---I'm not across that particular issue - - -

25

COMMISSIONER WHITE: Just excuse me, counsel. I think we just might identify whether we're on fire or not. So that that could be attended to and we're getting close to 11.30, would that be a convenient time - - -

30

MR BELL: Yes. Thank you.

COMMISSIONER WHITE: - - - before you start this topic. Mr Bentley - - -?---Yes.

35

- - - we might take a break for, say, 15 minutes and come back at 20 to 12, unless of course we have to go somewhere else. It seems to have stopped, but we'll take the break anyway so could you adjourn the Commission, please.

40

THE COMMISSION ADJOURNED [11.23 am]

THE COMMISSION RESUMED [11.41 am]

45

ROBERT GEOFFREY BENTLEY, CONTINUING

EXAMINATION BY MR BELL

COMMISSIONER WHITE: Thanks, Mr Bell.

5

MR BELL: So Mr Bentley, from about 2002 when you were appointed as chairman to the control body for thoroughbred racing in Queensland, you held a position with Tatts and a position with the control body that required you to make declarations of conflict and put in place management systems to ensure that that conflict didn't affect decisions. Is that right?---That's correct.

10

Okay. I'm going to ask you to look at a few documents, please, in relation to the disclosures you made, and then I'm going to ask you how you managed the conflict. So can I take you to the documents first, please. The document I'm asking you to go to is number 4, please. There's a few that I'm going to take you to that are clear enough, like this one. In October – 10th of October 2006 you were obviously asked to make a disclosure at Tattersalls, and you did so, in relation to potential conflicts of interest looking over on schedule 4. Is that right?---Yes.

15

20

Clear enough it is, isn't it?---Yeah.

And you were alert to the fact that being chairman of Queensland Racing while being a director of Tatts created a situation that needed management?---Correct.

25

Okay. Now, if I ask you to turn the page, then, please, to number 6. This is a minute of the Governance and Nomination Committee, of which you were a member, at Tattersalls. I'm sorry – number 5, Mr Bentley?---Is that the letter?

30

It's a minute at number 5.

COMMISSIONER WHITE: Document number 5 under the tab 5, Mr Bentley.

MR BELL: Might be back one?---Sorry. Yes.

35

This was the Governance and Nomination Committee, of which these are minutes. You were a member, you see at the top?---Yes.

40

And over the page you can see review independence criteria and assess independence of directors?---Yes.

And in 2(b), it was resolved by the committee that in accordance with the criteria, all directors were considered independent except for you?---That's correct.

45

Okay. And so - - ?---And – sorry.

Then may I ask you to go to 7, please. So much this is part of the – looking at the bottom of the page – part of the annual report for 2008 of Tatts, corporate

governance statement and then over the page – if you go over you’ll see just above the heading “Independence Professional Advice” recorded, “All non-executive directors were considered to be independent with the exception of Mr Bentley”?---That is correct.

5

And that was very much something that was made clear to you during your period of 10 years when you were with the board, then Queensland Racing, then Racing Queensland, while at the same time a director of Tatts?---You’re referring to me to – to this - - -

10

Yeah?--- - - - document?

Yeah. I’m referring to that document but the - - -?---And why it is like – and why it is like that?

15

Beg your pardon?---And why it is like that?

No, no. Not why it’s like that. I’m saying to you that the document, as the other documents I’ve just shown you demonstrate – you were conscious of the potential for conflict, because you were making declarations, weren’t you?---Yes, that and other things.

20

Okay?---Yeah, absolutely.

Well, we’ll come to the substance of it in a minute, but I want to show you these documents to show that this remained the position throughout the period, that Tatts were declaring it, that you weren’t independent and that obviously you were involved in that judgment?---The corporate council and – and the board deliberated on this and as of late of yesterday, I had a discussion with the chairman and he said under – under the new ASX guidelines, they are still going to continue to look at me as not independent because the three years – because of three years – the three years since I’ve left Racing Queensland is not up. This is – this is strictly in accordance with ASX and corporation guidelines.

30

That’s right. It is?---I have no problem with that at all.

35

It is and in fact, I’m going to show you that this sort of declaration continued, but then we’re going to talk about how you managed it?---Okay.

And if I ask you to go to number 12, please, you’ll see an email to Penny Grau and Harry Boon – Harry Boon, I think, was chairman, was he, of Tatts?---Yes. Chairman – yes.

40

I’ll let you read that?---That’s correct.

45

And what you were talking about there was that the interface between Racing Queensland and Tatts was Product Co and you weren't a director of it?---That's correct.

5 Okay. And then over, please, to 13. I think, Mr Bentley, if you go over to the second last page before the schedule, you'll see that you are recorded to have advised of the position relevant: that you're not a director of Queensland Race Product Co?---Yes.

10 At each meeting of Racing Queensland you make the declaration of conflict where there is or could be perceived to be a conflict between your duties. You don't receive RQL papers etcetera?---Yes.

And then, please, if you go to 14. And this is a minute of Tatts of the board meeting of Tatts of the 26th of August '10. And if you go over, please, to – about four pages, you'll see “2010 Annual Report” – a heading on the left-hand column, and just above it, paragraph number 7: “That the committee has assessed the independence of each director and resolved to recommend to the board that all directors be considered independent other than Dick McIlvaine and Bob Bentley”?---Yes.

20 Dick McIlvaine had been an executive of Tatts for some time earlier - - -?---He had - - -

- - - before he was on - - -?---He had, yes, and – and was a director.

25 And then became a director?---Yes.

And he was a director certainly in 2008, wasn't he?---Yes.

30 And was he somebody you came to know well over those years?---Yeah. I've known Dick for many years. Yes. I have.

And did you have dealings with him in relation to the way in which you managed the conflict with your roles as chairman of control bodies and Tatts over time?---Oh, I – I vaguely remember back in 2002 a possible discussion with him, but I don't recall any particular conversation.

Okay. And then I think 15, if I ask you to go to that, Mr Bentley, you'll see another Tatts publication in relation to the independence of its director. And the position remained the same in the last paragraph of that part of the document – sorry. You're looking at the wrong one. I'm looking at that document at 15, please?---This one?

It's a one-page - - -?---Yes.

45 Okay. It's part of the annual report and you'll see under the heading “Independence of Directors” in the last paragraph, the third line: “All non-executive directors are considered to be independent with the exception of Mr Bentley”?---That's correct.

5 So I think we can take it that you were conscious throughout the relevant period that it was right to declare that your position was not as an independent director of Tatts?---I – fair to say that – I mean I accepted the position of the – of the board and the company secretary – their decision, that they – they felt, in accordance with the reporting rules of ASX and the corporations, that it was on – they’d err on the safe side and say that I was non-independent.

Okay?---Yes.

10 And in saying that, I’m gathering that you’re really saying to me that you didn’t accept it, but because council judged it that way you were willing to go along with it?---I was certainly always willing to go along with it. I mean that’s - - -

15 So I think your answer is, “Yes. That’s right; I didn’t believe it myself but they thought” – is that what you’re saying?---No. I’m not saying that. I’m saying - - -

Well, what are you saying?--- - - - they – they made the decision - - -

20 Yes?--- - - - that – all right. In – in my – in my - - -

What was your - - -?--- - - - in my absence.

What was your decision about - - -?---I accept that decision.

25 Okay. What was your own decision? Putting aside their decision, what did you believe about the conflict?---I believed there – there was – was a possible conflict there if you didn’t manage it.

30 What does that mean? What do you say that means?---Well, it – I – first of all, I wasn’t on Product Company so I wasn’t at the interface.

Right?---So any decisions that were going to be made affecting – affecting Product Company, I mean I would have to stay right away from.

35 And what does that mean, “stay right away”?---Well, don’t become – don’t become involved.

40 You see, for example, I’ll tell you what I mean – just wait. I’ll tell you what I mean. Somebody could effect the same purpose by talking to the members of the decision-making board and saying, “This is the way you’re going to do it.” That would be a conflict, would it?---Absolutely, yeah.

You didn’t do that?---No.

45 Did you talk to any of the members about issues that arose that you saw as issues involving the conflict?---Any issues that I saw as a – involving a – a conflict I would stay right away from.

Okay?---With – with members – obviously I talked to members of Product Company, because they were also members of the board.

5 There's no problem with talking to people, Mr Bentley. We both accept that, because you're on the board of Racing Queensland and Queensland Racing with them, so you've got to talk to them. But I think you mean, do you, that I can take it – the commissioner can take it that insofar as issues arose in the relationship between Tatts and the control bodies of Queensland Racing, you did not discuss the matters at issue?---No.

10

Is that correct?---That's correct.

Okay. Are you sure of that ground?---Sure as I can be.

15 And I can accept that. We don't need to go back to it?---No.

Okay. So therefore, please, if you go to number 10 now.

20 COMMISSIONER WHITE: It's just a couple after the one you've been looking at, Mr Bentley?---Oh, is it?

Yes. It's down – the 10 is actually right down at the bottom – the tab 10?---I've got 15. Is it past 15 or before 15?

25 It's after 15. Look, we'll get someone to find it for you.

MR BELL: Now, I've given you enough time to read it? Mr Bentley?---Yes.

30 Have you had enough time to read it?---Yes.

I'm not suggesting for a moment you should remember it but the emails tends to suggest that you've asked general council of Tatts to isolate the occasions when you left meetings of Tatts due to the possible conflict. Doesn't it? I'll read it to you, "you ask me to ascertain and advise of any board meetings where you left the meeting due to a possible conflict of interest". See that question?---Yes.

35

She seems to be recording that, that was the question you asked her?---Yeah.

40 Doesn't it?---Yes.

We have reviewed the board minutes from 2007 on. The only time that the minutes record this happening was at a board meeting held on 24 July 09. Although you have left the board meeting on other occasions this is generally related to discussion about your re-election. So were there occasions when matters involving the conflict arose at board meetings of Tatts where you stayed in the room?---No. I can't think of any occasion.

45

Okay. Why were you asking her for this information?---Oh, I think just to be sure. So I can answer truthfully at an inquiry.

5 Well, were you anticipating in May 11, the inquiry?---No. But I was making sure that, I mean, that there is no chance of conflict.

Well, let's address - - -?---I'm - I'm - I've got to say that I'm not quite following the whole thing. Can I read it again?

10 Okay. No, that's fine. Yes, please?---This was in 2005. Would that be the Daubney/Rafter inquiry they're referring to?

15 Where are you referring to, sorry?---Is that referring to - the top email? It says, Bob Bentley said they're too busy as a result of the inquiry. Would that be referring to the Daubney/Rafter - - -

I think that we're at cross-purposes. I can see why you didn't understand my question now. Let's get the right document first. The document I'm referring to is at 10. I'll let you read it?---Yeah. I don't know why I asked that, to be quite honest.

20 Okay. Well, if she's right, it seems that you did not leave Tatts meetings much because of the conflict. Doesn't it?---That's correct.

25 Is that true that you - - -?---That's true.

- - - that you didn't have matters arise that created a conflict when you were at Tatts, much?---That's correct.

30 Was there consideration on the Tatts board in relation to the relationship with the Queensland Racing control bodies and the product agreement - product and program agreement?---No, I can't recall many discussions on the product and program agreement because it was set in stone as a contract. I don't think that there was any issues that arose that needed discussion.

35 What about - - -?---Plenty of, sorry - plenty of discussions about wagering turnover to make sure that - that sort of discussion but that's in the benefit of both - both organisations and certainly not a conflict.

40 Yes. The point you're making is that the more wagering that goes on the better for both because you're sharing the revenue?---That's correct.

45 Okay. What I'm talking about is issues that might have arisen in relation to whether Tatts could make a deduction from that revenue pursuant to the terms of the agreement. Did that ever arise?---No.

Did you ever discuss that question with anybody at Tatts?---No, I - I sent an email to Dick McIlwain shortly after there was advice. Malcolm advised me that - that he

had some advice from David Grace that Tatts may very well be in contravention of the agreement. I saw the best thing you can do is send it off to Dick and I'll just send Dick a quick email to tell him its coming to make sure he takes your call. Words to that effect. I'm not sure if that's exactly what I said but words to that effect.

5

Do you remember that - - -?---There should be an email to that.

Do you remember that email, Mr Bentley, from work you've been doing in preparation for this inquiry or you remembered it from some years ago?---I - I remembered it because the press shoved it in my nose.

10

When?---I think prior to the - the inquiry being announced.

Okay. Well, in any event, what I think you have just said to me is that you recall sending Dick an email about the question of deduction of some of the revenue but that's it?---No, no, no. I didn't say - - -

15

Okay, you tell me again?---I don't - I'm almost sure that I didn't say what it was about. I said, Malcolm - Malcolm will be contacting you. There's an issue that's come up with Product Company or the product and program agreement - something to that effect.

20

I see - - -?---I sent the email out of courtesy. I know Dick very well. I've known him for 25 years. He would think it strange that I didn't alert him that something was coming from Mal. And I think I also said at the bottom of the email, Mal will handle it.

25

That's a pretty good recollection?---Well, mainly because, I mean, I had the press hounding the living hell out of me. That's why - I remember it.

30

Did you have any other part at that time in relation to that issue, either for Racing Queensland or for Tatts?---No. I had no discussion at all. I mean, if you could also - that could be confirmed by David Grace.

Did you say you had no discussion with David Grace?---No.

35

You sure about that?---Positive.

Okay. And you don't need to see any documents about that but you're sure about that, are you?---Yes.

40

Okay. We'll come back to that. But certainly it is the case, isn't it, that there were circumstances that did arise that would involve you putting in place management systems because issues might arise or did arise between Tatts and the control body?---I think it'd be fair to say that there wasn't a lot of issues that did arise.

45

Oh well, we don't need to know about a lot. We need to know whether there were any, you see?---Well, I can't – can't tell you of any off the top of my head that came about. The only one that I was aware of was this – was this legal advice. Obviously, no one told me – get legal advice. I haven't seen it. I haven't read it.

5

You didn't read - - -?---In either – in either place, no.

Okay. Do you recall it coming up, this question, on the board of Tatts?---No.

10 Okay. Well, we'll come back to that. So what we were talking about was I was showing you documents about how it was that Tatts had decided, at least, that you weren't independent?---Yes.

15 Now, can I switch over to the control bodies of which you were chairman and talk a little bit about your position you took there, please, by showing you some documents? And I'll ask you to go first to document number 17, please. If you can't find it, tell me?

20 COMMISSIONER WHITE: It's further on, Mr Bentley?---Towards the back is it?

20

Yes. It's 10 in?---I've got 18.

25 That's two next, before 18 [indistinct]

25

MR BELL: Now, what we are doing is I'm taking you to documents that make, I suggest, plain that you appropriately made declarations to Queensland Racing and Racing Queensland that as a director of Tatts you were conscious of a conflict and its potential impact upon your decision making?---Yes.

30

Okay. So the first one is the one I'm showing you at 17 and on the 29th of June – this is 29 June 10, you declared the conflict to Racing Queensland in respect of your directorship of Tatts?---Yeah. From my recollection I declared my conflict with Tatts at every board meeting.

35

Yeah, this is at Racing Queensland now?---Yeah. At Racing Queensland – everything.

40 Yes, yes. I understand. You're saying that – don't worry about these documents because at every meeting I made the declaration, aren't you?---No, I'm not saying that.

45 Okay. What are you saying?---What I'm saying is that I made a declaration at each board meeting of my directorship of Tatts.

I know that. But I'm – I want to take you to the documents too, you see. So the first one is at 10 – at 17. You'll see on the 29th of June 2010 you declared that as a

conflict of interest. Didn't you? It's clear enough?---I'm looking at an election – a thing that says elections.

I see?---Yes. That's the declaration I made, yes.

5

Okay. That's a declaration you made. Now, just go over to the next document 264, please, Mr Bentley. Do you remember that there was in place a code of conduct for Racing Queensland?---Yes.

10 And that document was a document that you were involved with in the sense that you can see on the first page you wrote a message as chairman. Do you see that?---Yes.

Have you got that?---Yes.

15 Yes. And then under objectives, you see there that it says, "Racing Queensland is committed to delivering the highest standard of corporate practice and business conduct. We aim to be a model corporate citizen, conducting business in an ethical and responsible manner, complying with all applicable legal requirements, promoting a positive and ethical work environment for employees" etcetera?---Yes.

20

And that was, in part, to inspire the utmost good faith, confidence and support of all participants and stakeholders in racing in Queensland?---Yes.

Was that ambitious?---I think anything you do in racing is reasonably ambitious.

25

But anyway, it appeared as an objective in here and it was something you signed off on?---Well, I think we all aspire to those sort of ideals.

30 What about transparency in the next one, "is committed to fairness, impartiality and transparency in its decision-making"? Were your decisions transparent?---I consider they were.

Okay. And then "will act in the best interests of racing in Queensland"?---Yes.

35 That goes without saying, doesn't it?---Yes.

And then over the page, if I ask you to go to that, please, and you see under the heading Role of the Board of Racing Queensland. Have you got that?---Yes.

40 And then you see that, again, in the third paragraph the code has reference to the legislation requiring every board member to disclose a personal interest - - - Yes.

45 - - - or a direct or indirect financial interest in an issue being considered or about to be considered by the board where the interests would conflict? "Unless the board otherwise directs, the member must not be present when the board considers the issue or take part in the decision of the board about the issue"?---Yes.

Did you understand “take part in the decision” to mean more than just not taking part in voting?---Yes.

5 Okay. You understood it, did you, to not take part in convincing people who would be voting?---Absolutely.

Or take part in convincing executives to take a certain position on a question when they would promote it to the board, for example?---As far – any issue in conflict, yes.

10 Yeah. Okay. And there was a similar code of conduct, I think, if you go to the next document 18 for Racing Queensland?---Yes.

And in particular, you’ll see that one involved conflict of interest?---Yes.

15 And in particular, I think that you have mentioned that what happened was each of the directors were required to make the declarations if they had a conflict so that all involved in the decision-making would appreciate your position and their position?---Yes.

20 Okay. Now, if I could ask you to go to tab 19, I hope, is the next one, please?---19, yes.

And you’ll see that what’s occurred there is Mr Lette has filled out the conflict of interests and racing interest declaration form, 30 June ’10?---Mmm.

25 Okay. And then – I ask you to go over to the next, please, number 20. You’ll see on the last page that Mr Hanmer seems to have filled his out on the 23rd of June ’10?---That’s the date I see.

30 I’m sorry?---That’s the date I see.

Yeah. That’s right. That’s all we can go on, isn’t it?---Yes.

35 And then if you turn over the page, Mr Ludwig – sorry, over to the next document, I should say, 21, Mr Ludwig, 29 June ’10?---Mmm.

And then the next one that we find in the file is yours, but on this occasion it seems it’s not complete?---In what way it’s not complete? It’s not signed. Is that right?

40 Yes. The next one which is the document at 22 seems from the files of Racing Queensland that yours was not complete?---Well, I find that fairly - - -

Okay?--- - - - unusual. I mean, I’m sure that I would’ve signed that or something similar.

45

Okay. And then, Mr Bentley, you say in your statement that you can recall that that there was education about conflict of interest delivered by Mr Dunphy to members and officers of Queensland Racing and Racing Queensland over time?---Yes.

5 And in particular, let me tell you, from looking at the records, this is how it appears and I'll show you the documents where you can look at them over lunch if you wish to see whether I'm right. On the 7th of August 2000, there was held such an education program which the attendance sheet shows that you did not attend. Could that be possible?---Yes. That will.

10

Okay. And in 2001, there's no evidence of any training occurred. In 2002, 2003 and 2004, it does not seem, from the records, that there's any education. However, in 2005, February, you requested that the training be postponed because of the new control body about to come in. In April 2005, there was such a education program and you did not attend. In 2006 – on the 30th of August 2006, another one. When an email was sent on the 1st of August 2006, notifying that you would not be attending. In 2007, there's no evidence of any training occurring. On the 4th of June 2008, there was education and you did not attend. On the 25th of June 2008, as I've said, you did not attend and that appears quite clear from the attendance sheet. On the 24th of June 2009, there was no training held and it was said that that would occur after the elections and then, after that time, you have said in your affidavit that you recall that there was training at about the time that Racing Queensland became the control body in mid-2010. There's no record of any training at that time. Could it have been that you were referring to an earlier time?---No. My recollection of conflict of interest training was 2002, just after the first board was formed. There was one at midterm, I think – mid-2005 or 2006 and there was one in 2010. They're the only ones that I'm aware of. I don't know anything about the other ones. The one in 2010 I did not attend, neither did Mr Lette I think you'll find. I think that – I mean that we were well across the issues of conflict of interest and we did not see it necessary to attend. The conflict of interest and the training that we asked Barry Dunphy to do was for the incoming directors who didn't have a lot of experience in that.

Well, the information coming from Clayton Utz and Mr Dunphy is that there's no record of such training in mid-2010, but your recollection is there was, is it?---There was.

Okay. Now, if I ask you then, Mr Bentley, to go to the document behind tab 23, please. I'll let you – that's an email you wrote; isn't it?--- Yes.

40 I'll let you read it and then I'll ask you a question about it, please?--- Yes, I wrote that.

Okay. Does it record the truth?--- As far as I can see on the – on the first reading, yes.

45

Okay. And - - -?--- I'd want to go through it in detail to answer that question absolutely, yes. But on first read, yes, I believe it is the truth.

Let me take you to particular parts and you can be precise in your answer, then. About halfway down you say, "All dealings with UNiTAB have been through Product Company, and I do not attend these meetings or receive minutes as an added precaution." Now that's right; is it?--- That's correct.

5

You don't attend meetings - - -?--- Nope.

- - - of Product Co?--- No.

10 Have you ever attended a meeting - - -?--- No.

- - - of Product Co?--- No.

Not one?--- Not one that I can recall, no.

15

Okay?--- No, I'm - - -

I'm laughing not really at you, Mr Bentley. I know it's been a long time. But the thrust of my question is really as far as you can recall, is there any occasion when you've had business to be at a Product Co meeting with other directors - - -?--- No.

20

- - - of Product Co?--- No.

Okay. Certainly, if the question of a deduction under The Product and Program Agreement was being discussed, you ought not be there?--- Absolutely not.

25

Okay. You're meaning no, I should not be there?--- Absolutely.

Yeah, okay. And then the next sentence, "The potential conflict is declared at each board meeting of Tatts and QRL" - - -?--- Yes.

30

"and the dual role is recorded in both company board meetings." That's true?--- That's true.

35 A management par put in place to control it?--- Yes.

And then you say, "There has been extreme care taken to ensure that any conflict or perceived conflict has been taken into a consideration and the appropriate action taken. There has not been one instance where any conflict or potential conflict has arisen that has not been handled appropriately. This is the very essence of corporate governance." Now, this email is to be understood to be you writing to the government about an issue that's arisen in the press that you have a conflict and don't manage it by Mr Sinclair, the journalist?--- Yeah, that doesn't surprise me, but that's correct.

40

45

No, I know. But it's true; isn't it? You're writing to the government and you're saying to them, "Don't be concerned about what he's saying, it's not right."?--- I

5 think you need to put this in the proper context. Mike Kelly's position with the government, people would go to him with the complaint. The minister might say Mike, you'd better get on and find out what's going on here. Mike would ring me or email me and then I would answer. And that would be an answer I would've given to Mike Kelly at his request. It wouldn't just be something out of the blue.

No, and I think that's right. You're suggesting, aren't you, and reinforcing the fact that you wouldn't tell him anything but the truth about it?--- That's correct.

10 Okay. So it's a serious answer because it's going to a serious place in the sense of who they are. Kelly's going to give this response to government people?--- The government minister, yes.

15 Yeah. Because they have – government had powers over Queensland Racing and Racing Queensland?--- Yes.

20 And then if I take you a bit further down, please. About – the next paragraph commences, "The Tattersalls board reviewed this issue at length at 2009 board review and were of the mind to declare that, as the dealings are through Product Company and that any issues of potential conflict are rare, that they, the directors, considered that I was in fact independent."?--- Yes.

Is that true?--- Yes, it is true.

25 So Tatts determined that you were independent in - - -?--- I think – I think – sorry to interrupt you. But I think for one year they did declare that I was independent.

30 What about the former years?--- Some – look, I'm not absolutely sure. I'd have to check this out.

35 Well, I thought we - - -?--- But at one stage, yes. I remember them saying that I was independent. And I think – I don't know whether this time or the timing. But yes, there was a discussion that I was independent. But then they reverted back to non-independent. I'd have to check it out but that conversation definitely happened.

We went through a lot of documents before, you recall. Remember the ones we went through?--- Yes.

40 And we established that it seemed pretty plain on those documents over time that Tatts declared that you were not independent?--- That's correct.

45 Okay. Including in 2010?--- Yeah, I – well, look, I haven't got the value of the documents in front of me. But as far as I was concerned, that conversation did take place.

Okay. Have a look at the date of your email. 2010; you see?--- Mmhmm.

Now, what I don't see in there is you telling the government, "Over the years, they thought I was not independent. But in 2009, they changed their mind for one year." Why don't you do that?--- I don't – I can't answer that question.

5 Well, the answer is - - -?--- That's – I remember distinctly how this conversation at Tatts had been independent, non-independent.

But, Mr Bentley, you see my point; don't you? You can't tell half the story; can you?--- No.

10

Because the half of the story - - -?--- I agree with that.

Just wait. The half of the story's good for you. You're not telling the other half of the story. You see my point?--- I can see your point by reading that.

15

And what do you say about it now?--- I'm saying that – I mean, there was discussion at one stage at Tatts that I was non-independent. I'm quite flabbergasted reading that actually.

20 But you wrote it?--- Well, yeah. I'm saying that – I'm saying that, yes. But I do remember that conversation.

And I see on the next - - -?--- And there was certainly no intent in it.

25 Well, why would you write it, Mr Bentley? You see, you're trying to convince the government that silly Sinclair the silly journalist has got it wrong?--- I'm sorry, I can't answer that question.

30 Okay. Well go on, then. "The issue of independence will be reviewed annually and my best assumption on the Tatts board discussion is that I will be classified as independent director in 2010 and/or report." Why would you think that?--- Well, what I'd like to be able to do is check that out with the corporate council who was with Tatts and reply to that at a later date.

35 Okay?--- Because I definitely remember that discussion.

Absolutely, you do that. But what - - -?--- Is that all right?

Absolutely?--- Good.

40

We want you to do that, please. But what I'm not interested in so much, Mr Bentley, is that you had, with corporate council of Tatts, an understanding that they considered it in 2009 and that at that time they thought you were independent. Go away and find that, that is important, I understand?--- Yep.

45

But what's really important is that you don't mention that on many occasions they found you weren't independent. You don't say that. And the point of my question is

that the fact that you only tell the good part and not the other part tends to implicate you in telling the government something that's misleading?--- I think I answered your question to that before.

5 I don't think you did?--- Well, I – with all respect, I think I said to you - - -

Say it again?--- At the - - -

10 So I can understand it?--- The board of Tattersalls considered at different times that even though they considered that I was probably independent that they, for the stock exchange rules and regulations and corporate governance, they put it down that I was not independent.

15 And you know what's - - -?--- And I've had that conversation pretty well every year.

20 Yeah. That's not very transparent; is it? Transparent meaning for all the lovely shareholders of Tatts, they get this information that you're not independent when really everybody thinks you are but you don't tell anybody that. That's funny?--- It's in the annual report that I'm not independent.

25 Correct. Correct. So you're telling me here that in fact people in there, people of responsibility, thought that that was just a precaution, it wasn't the truth?--- I don't know what other people might've thought. But I mean, that's the issues and that's what happened.

30 Okay. Well, let's – I'm not going to spend all day on the detail. One last go. Why didn't you mention what happened in 2006, 2007, 2008 about not being independent? Why didn't you mention that to the government?--- Well, I've got no – no reason. I mean, there was nothing – no harm in this - - -

Well, let me suggest - - -?--- As far as I can see.

35 Let me suggest what it looks like. It looks like you're trying to convince Kelly that you are independent and he can be confident on it, when in fact if you told him the whole story, Tatts thought you weren't often?--- I think if you asked Mike Kelly, he'd know that I was non-independent, that it had been written.

40 Okay?--- I mean, I don't even know whether that's – as I say – I mean, I'm quite surprised. Sorry.

Yes. I thought the extreme care part – is that accurate?--- Yes.

45 Okay. And would you be good enough to go to divider 24, please?--- Yeah. Could I just - - -

Sorry, you go?--- Could I just return to that?

Yes, please?--- If you go to the paragraph that says the Tattersalls board reviews this issue at length; right?

5 Yes?--- That the directors consider that I was, in fact, independent.

Yes?--- But the company secretary and council agreed, but advised the board that for 2009, the annual report should be on a strict interpretation of the ASX reporting rules, as the company's reporting records should be absolutely without question. So they reported me as non-independent and that's what it says in that line.

10 And what - - -?---That's why – that's why I was hesitant - - -

15 Okay?--- - - - in answering the question, but that – that is exactly what I said and that's correct. They did consider it. They said but for the ASX reporting rules they said they'd declare me as non-independent.

Yeah?---Now – now, that is correct.

20 I don't really get that. I'll tell you why, so you get my question. In 2006, 2007, 2008, you go to subcommittee meetings and you are declared non-independent. We've been through that?---Yes.

25 In this letter you're saying – you're pointing out to me that, in fact, in accordance with the ASX test, you again in 2009 declared not independent, but that was just a formality, is the point. Is it?---No. What I'm saying and what the letter actually says - - -

Yeah?--- - - - is the directors of Tatts agreed – right?

30 Yeah?---After discussion agreed that, in fact, I was independent. Right? But because of this – reporting rules for the stock exchange, they would be reporting me as non-independent, and that – what I'm saying there is absolutely correct.

35 You know, Mr Bentley, really I don't get what you're saying because I think what you're saying is, "I've made lots of declarations that I am not independent, because I do have a potential conflict, but I'm telling the government that when the Tatts board got together and talked about it, ASX caught me as not independent but, in fact, I was independent"?---No. I'm – I'm sorry, and due respects – what I'm saying there is very, very clear as far as I'm concerned: that the board had a discussion, and they
40 have a discussion every year about independence. They were of two minds whether I was or I wasn't, but they had a discussion in this particular time and said that they – the directors considered under the circumstances I was independent.

45 Okay?---Right?

But you really – but - - -?---So – but the company secretary, who was very pedantic down there, said I think in these cases we must report that you're not independent, and that's – and I'm just reporting the conversation.

5 It's a little bit hard with the transparency thing to get to that. Where do we find that?---Beg your pardon?

Where do we find that the board said, "You are really independent" - - -?---Oh, they said – I'll check with - - -

10

Just wait until I finish my question – "You are, in fact, independent, Bob, but we're going to declare you as not independent." Where do I find that?---They considered that I was independent. That was a discussion that the board had.

15 Yeah?---Whether that is in documentation or not I don't know, but that was - - -

That's - - -?--- - - - that is a true recording of what actually happened. Right?

20 Okay. I've got it, but let's – without getting too focused on this – finish it by this: you don't think you're independent, do you?---In lots of ways I'm classed as non-independent. Right? But the issues of – of dependency and you – if I stay away from Product Company, I mean there's – there's no reason why I can't be dependent – independent.

25 At the 3rd of January 2010, you did not consider yourself independent, did you? You understood conflicts of interest very, very well, you said?---I do. Yes.

Sorry?---Yes. I do – do understand it, and I understand what a – what a conflict is.

30 And you knew you should not be styled independent in 2010 in January, didn't you?---Well, I'm – I'm saying there's two issues here: whether I'm independent at Tatts or independent at Racing Queensland.

Exactly?---Yeah.

35

Hard to be – when you're on both, it's hard to be independent, isn't it? That's the point - - -?---Well, I'm only reporting here - - -

That's the point of the declarations?--- - - - what the discussion was at Tatts.

40

Mr Bentley, that's silly, honestly, isn't it?---Beg your pardon?

You agree that's silly to say that?---No.

45 You don't see what I'm saying?---I'm saying that you're misinterpreting what I'm saying there.

Okay. I thought you were - - -?---Do I – do I consider myself independent?

Yes. Do you? Did you at that time, 3rd of January?---By all things, I mean I would have to say that I – I’ve said I was – was non-independent.

5

Okay. Good?---Yep.

And yet to Mr Kelly, the government man who was concerned, obviously, about the Sinclair allegation in the article, you were willing to say, “Look, really I am, and they just do that to cover ASX requirements”?---No. I didn’t say it was covering - - -

10

Okay?--- - - - ASX requirements. I mean that’s the company secretary that said - - -

Okay?--- - - - covering – and I mean I think I could get that confirmed.

15

Is that really your - - -?---I’ll – I’ll attempt to get that confirmed.

Is that really your grown-up answer to our proposition here about this topic? “The company secretary said it. I’m not saying it,” or something like that?---Company – what I’ve put here – the company secretary - - -

20

Yeah?--- - - - actually said – right? That is what she said.

Yeah. Look, I’ve got it. You - - -?---And that’s what – and that’s what happened.

25

I’ve got it, but the point is that part of all the evidence you give to the government officer - - -?---Oh, I think I was answering the - - -

Why do you - - -?---I was answering the nonsensical question of Sinclair.

30

Were you? Okay. Why don’t we go to 24 – divider 24, please, Mr Bentley. This is an email from Mr Hanmer to Mr Kelly at the same time – in fact, the same day?---Yep.

35

I’ll let you read it?---Yeah. I can’t – I can’t recall, but I mean that certainly sounds like Mr Hanmer.

He must have known that you had written to Mr Kelly?---I daresay he did. I talked to all the directors.

40

Clearly enough. Did you ask him to write to Mr Kelly to support you?---Absolutely not.

And - - -?---There’s no – there was no need to do that.

45

But you and Mr Hanmer were close, weren't you, in relation to your dealings on Queensland Racing and Racing Queensland?---Oh – yeah. I talked to all the directors, yeah, all the time. I was - - -

5 No, no. I was – no. I was referring - - -?---Yeah. Mr Hanmer's been – been a director since 2002 with me.

Exactly?---Obviously, I talk to him a lot. I – I run things past him, but there is a – there is a fine line between what we can talk about and what we can't.

10

And he was deputy chairman, wasn't he?---Correct.

But he was chairman of Product Co?---Yes. Correct.

15 And in relation to the business of Product Co, you would not talk to him about that?---No. Mr Hanmer was very, very defensive about his position on – on Product Company as – I think that could be reasonably confirmed.

Okay?---And he was absolutely pedantic about any perceived conflict.

20

Okay. He was pedantic, was he?---Absolutely.

Okay. And then if I ask you to go to the next one, 265, you see Mr Kelly coming back to Mr Hanmer, convinced?---Yes.

25

So - - -?---But I haven't seen those before.

No. I know. I know. I'm just saying to you it seems clear, doesn't it, that your email and Hanmer's email did the job?---Oh, I wouldn't think that – I mean - - -

30

Well, what does it look like to you?---I mean I don't know what it looks like, but I mean that's certainly not the case. I mean Tony would've written to – to Kelly independently when he saw the article. Well, I mean we – we on the board were continually under attack from Sinclair and his – and his cohorts, constantly, and we always replied. I always replied to these sort of things.

35

All that answer just then doesn't address anything I asked you, but you can keep it saying it if you want. But I've got to come back to the question, and the question is it seems like your email and Hanmer's email convinced Kelly, doesn't it?---Look, I can't answer for Mr Hanmer. I can only answer for mine.

40

No. I just said - - -?---I – I answered – I answered the article, and probably due to a question from Kelly. It wouldn't have been asked for me – I wouldn't ask Hanmer to do that. It'd be wrong.

45

Have a look at the email. And all I'm asking you about, Mr Bentley, is from the email, doesn't it appear as if he was convinced?---If you want to draw a conclusion I guess it does, but – but - - -

5 I do want to draw a conclusion?---Yeah. But as far I'm concerned, I deny it emphatically.

You what?---It's not correct. Emphatically, it is not correct.

10 What's not correct?---The inference that you're trying to draw that – I mean that it was a concoction.

No. I'm not saying that; I'm just saying that the two emails you and Hanmer sent had the effect you wanted them to have – that was to put paid - - -?---I don't think there was a – I wasn't chasing an effect. What I – what I was doing was answering a query from Mike Kelly. That's – it stopped – finish.

I'm sorry. I thought what you were doing was telling Kelly, "Don't worry; I am independent and I do control in conflict"?---Yeah. I was telling Kelly – in answer to Sinclair's article, I was letting – letting Kelly know exactly what the situation was. What Hanmer does with that sort of thing is his own business, and it certainly wasn't prompted by me.

No. But you did tell him you'd written to Kelly about it?---Oh, I could have done that. Yes. I probably told a couple of the other directors as well.

Now, do you recall that this issue of conflict became sufficiently serious in 2011, in May 2011, that you asked Mr Grace to get a barrister's – senior barrister's advice about it?---No.

Okay. Well, what happened was – I'll try and jolt your memory. What happened was an issue arose and you wrote to Mr Grace and said, "Look, I've got instructions here. I want you to get an advice from a senior barrister so I can show it to people I don't have a conflict," or to that effect?---Oh, I could have done that.

Yeah?---I was sick of – done to death – sick of people – yeah.

So now do you remember that you did go to Grace and ask for - - -?---I don't – no, no. I said that is entirely likely. I don't remember. I mean I'd have to see the paperwork.

Okay. Let's have a look at it?---But that's possible.

Let's have a look at it. If you go to 26, please - - -?---Is there something – which part of the email do – read the whole lot?

Yeah. You probably have to, if you want. What it is is – it seems to me, anyway – the subject is “Conflict, perceived”, and you’re writing to Grace to give him information about how it’s handled so that he can give that information to the barrister to get an advice about whether or not it’s handled properly?---Yes.

5

Okay. And then if I ask you to go to 27, please, and if you look at last page. You’ll see it’s dated 9 May 2011 and signed by Mr Grace?---Mmm.

And go back to the first page. It says, “We act for Racing Queensland. Its chairman, Mr Bob Bentley, is a member of the board of Tattersalls Limited” and the he gives background. Do you see that?---Yes.

And that background fundamentally came from you, of course, didn’t it?---Yes. Well, without reading it.

15

Yeah?---I would’ve briefed him and asked, well, let’s put this issue to bed for good. Let’s get proper advice and do it.

Did you get it put to bed?---Nothing in writing ever gets put to bed if someone’s got an issue.

20

I probably should be more specific. Did you put it to bed in the sense of getting a senior barrister’s advice?---Well, I think that was the intent of getting a senior barrister’s advice and whether we got – I can’t remember the advice, but, yes, I would’ve asked for that advice and that would’ve been the reason.

25

My question wasn’t that. My question was did you put it to bed by getting a senior counsel’s advice. Not asking for one, getting one?---In my own – certainly in my own mind I put it to bed.

30

Okay. That’s not an answer either, Mr Bentley. My question is do you recall receiving a senior counsel’s written advice or oral advice that you did not have a conflict or, if you did, it was managed properly?---No. I can’t remember the document - - -

35

Okay?--- - - - but I remember asking David Grace, do it.

Well, you’ve got the documents now?---Yeah.

You can be sure of that?---Yeah.

40

Okay. Let’s have a little bit of a look at this. In 9(a), one question I wanted to ask you is this. I’ll let you read – sorry, not 9(a), Mr Bentley. 7(a)?---Yes. That’s correct.

45

Okay. So, "The issues that Mr Bentley advises he has excused himself from the Tatts Group board meeting are (a) the possibility of Tattersalls Limited making an offer for Sky Channel in late 2009". Do you see that?---Yes.

5 Did you excuse yourself from the meeting of Tattersalls for that purpose?---I believe I did.

Is that why you were asking the legal officer of Tattersalls for a record of when you left the meetings?---No.

10

The one I showed you earlier?---No.

I think it was. Think about that?---Could you ask the question again?

15 When I asked you earlier about that email from the legal officer of Tattersalls where she said,
"You have asked me for the occasions when you left the board meetings"
- - -?---Yes.

20 Yeah?---So that was to do with this, yes.

Yeah, yeah. And she came back, you'll recall, and said only once?---Yes.

Yeah. Did you leave more than once?---I think – I can't answer.

25

Okay?---I've been at Tatts' board for quite a while, but I certainly – there wasn't very many times that I had to leave, no.

30 Okay. But certainly one when you did have to leave was when the possibility of Tatts making an offer to Sky Channel in late 2009, you say, was one when you left?---Yes. Definitely that. Definitely.

How many occasions did you leave for that topic to be discussed?---I think it was only discussed at one board meeting.

35

Okay. What was the - - -?---I don't think they made a – I don't know what the resolution was.

40 Why did you leave? What was the conflict?---I think it'd been that Sky Channel were also a material supplier to Racing Queensland.

How?---Because, I mean, they control the media – the vision rights for racing.

45 And they were dealing with the clubs, were they?---The contracts were with the clubs, yes.

Yeah. That's right?---Yeah.

5 And then what was to happen? Why did it conflict with Tatts? Just explain it for us?---Well, if Tatts suddenly took over Sky Channel, those contracts would then be notated through to the board and Tatts rather than the board and Sky Channel and I think that was the reason and I think I left – I left the meeting mainly to be on the safe side.

Okay. And then in (b), we've got the Product Co discussion about the wagering program?---Yes.

10 And this here means that when the wagering program involving racing in Queensland comes up on the Tatts board, you leave?---No.

Okay. Does it mean that you just don't attend the Product Co meetings?---I don't attend the Product Company meetings, no.

15 Okay. What about the interaction between Product Co and Tattersalls when that arises at the board about the program?---No. That's – the final program is done by Racing Queensland. It goes - - -

20 Yes. I know that?---It goes to Product Company who may make some changes or not which I don't attend and they negotiate with Tatts.

Yes. And does it come back to the board of – did it come back to the board of Tatts at any time – to the board of Tatts?---What, the racing program?

25 Yes?---No. I think it only comes back as it had been agreed because it's usually done with the subsidiary UNiTAB.

Okay. So - - -?---The Product Company deal with UNiTAB.

30 Okay. So why did you say here to the barrister, "The issues that Mr Bentley advises he has excused himself from Tatts board meeting are (b)"? I don't get that?---Well, that's the wagering program for the year. That's not weekly.

35 Really?---That doesn't go to the Tatts board, the program. The program goes to UNiTAB.

I know?---It doesn't come to the board.

40 Well, I'm just asking you, Mr Bentley, why you were going to tell a barrister that when it's not right?---That's not strictly correct.

Okay?---The last sentence is correct. The – I do assist – I have assisted in times when asked with the racing program – formulating it. It's in the best interests of both
45 parties.

It's hard not to, isn't it, really - - -?---Yes.

- - - in your role as chairman. Do you agree with that?---It's not hard to manage the conflict.

5 No. But do you agree with that? I mean, really and truly, in being the chairman of Racing Queensland, a very important part of it in trying to maximise its revenue, its wagering - - -?---Yes.

- - - revenue share is that you have to be involved in the program to some extent to make big decisions?---I wouldn't say – I wouldn't say big decisions, but - - -

10 Okay. Little decisions?---But it's in both parties' interests, right, and I don't consider it a conflict and I don't think anyone working with Racing Queensland considered it a conflict that we put the program together and if there's assistance required by the executive staff that we'd talk about it. I mean, there's the QTIS
15 scheme. There's all sorts of things like that - - -

Yeah?--- - - - but that's not in conflict. There's no conflict there at all, but the decision – the actual negotiations – what I was meaning there, the actual negotiations
20 and the final sign off or any argy-bargy with the racing program was done with Product Company and UNiTAB.

I'm not talking about the - - -?---The Product and Program Agreement is fairly fixed. It says that the industry has got to produce so many race meetings a year. The only
25 argy-bargy that ever comes is whether they would like to try and cut them down or increase them. The actual content, where they were held is in both the parties' interests so the actual argy-bargy at the end [indistinct] not involved.

But it is true – my question was it's difficult as chairman of Racing Queensland or Queensland Racing before that or even the board to not be involved to some extent in
30 discussing with the executive the program?---That's essential.

Yeah. And not only that. There are also two sorts of racing that go on in Queensland in which the control body must be involved. There's Tattersalls racing
35 and non-Tattersalls racing, isn't there?---Yes.

So how that is worked out too is important, is it not?---Absolutely. It's all part of the one mix and, I mean, it's something that Racing Queensland should do, but the conflict's easy to manage.

40 Okay. But that's certainly part where a chairman would – the new chairman now has to become involved from time to time, does he?---I don't – I don't know what the new chairman - - -

45 Okay?---When I walked out the door, I - - -

Sorry. It was a bad example?---Yeah.

Let me do it the other way. You had to become involved in that from time to time?--- Yes, I certainly did.

5 Okay, there you go. Now, we were talking about, you'll recall, the brief to counsel. And I think we established by looking at this document it appears as if it's true. You had asked Grace and Grace had prepared a brief to go to a barrister or barristers to get advice?--- Yes.

10 Okay. And just go to the last page, the one that Mr Grace signed, of the 9th of May 2011, please. And you see there - - -?--- Is that before the document?

I'm sorry, yes. It's number 27?--- Brief to counsel?

15 Yes, please. Just going over to the last page of it. On the last page, do you have paragraph number 17?--- Yes.

20 And below that, you see "Counsel are briefed to advise as to whether the positions as director of Tattersalls and the director and chairman of Racing Queensland held by Mr Bentley, given that Bentley has declared the potential conflict of interest in each case and he exempts himself from any discussions on or participation in a decision of either company in relation to any matter in which involves a decision with the other."?--- Correct.

25 Etcetera. So that's what he was asking because you wanted legal advice about it?--- Yes, I did want the legal advice. Correct.

Yeah. Was that to show somebody? Well, it couldn't be for you - - -?--- No, it wasn't. I - - -

30 - - - because you knew?--- Pardon?

35 It couldn't have been for you because you knew. You were certain of your position?--- I don't know why exactly that I wanted it. But I was sick to death of hearing about it all the time.

40 Yeah, okay. So then if I ask you to go to 29, please. You'll see the front page, it appears to be the front page of a brief from Cooper, Grace and Ward to counsel styled "Brief to Council for Joint Opinion", addressed to Mr Simon Cooper QC?--- Mhmm.

You see that?--- Yes, I do.

45 Okay. And then if you turn over the page when you're ready, you'll see what is in there is Mr Grace saying, "Following our conference on the afternoon of 10" - - -?--- Could you give me the number, please?

Yes, of course. It's the same one that you're looking at if you go over the page?---
Yeah.

5 So the second page; have you got that?--- I've got the second - - -
Not the front sheet?--- Following the conference?

Yeah, you've got it?--- Yeah.

10 Just read that introduction. So my point is that you had answered a number of
questions offered by Mr Grace so that it could – your answers could be given to
counsel. You see that?--- Yes, I do.

15 Okay. Now – and would you mind going over to number 30, please?--- 30?
Yes?--- Yep.

And you see a letter there, 13 May - - -?--- Yes.

20 - - - '11 - - -?--- I do.

- - - from Mr Grace to the barristers. And typed up notes of a discussion you had
with Mr Mitchell?--- I sure do.

25 And that's about – is that about the television rights to racing?--- Yeah. Yes, it is.
Yeah.

Okay?--- It was - - -

30 And then - - -?--- A very heated discussion because Harold Mitchell expected me to
pull strings that they – so his company would get the TV rights.

35 Yes?--- And I said absolutely not, I wouldn't do that. It was a club decision. We all
– all our involvement with that was putting the rights together so the clubs would get
the best deal and so the little clubs - - -

Yes?--- Wouldn't get the chop.

40 Your point was together they'd get a better deal than doing it one by one and the
weak clubs get picked off?--- That's correct.

45 Yeah. And then if you go to a document I hope is in your bundle at 296, please. I'm
sorry, I've jumped one. I think I jumped one, Mr Bentley. Would you mind going
back one to document 31, please?--- Yes.

Ms Murray was the legal officer at Racing Queensland on the 25th of May '11?---
Yep.

She's recording that she's had a conversation with you; isn't she?--- Yes.

5 Okay. And she says, "I've spoken to Bob. Bob has advised that there is no need to go into such depth. He would only like advice in relation to conflict of interest corporate activity. Happy to give you a call." What had occurred was the barristers wanted some more information, and you didn't give it to them, saying that you'd prefer and advice that just addressed those topics?--- I can't answer that question.

10 Okay. But it looks like that; doesn't it?--- Well, I don't know. Once we - - -

Well, read the email for me and see if it looks like that?--- Yeah, Bob has advised there's no need to go to such depth. He would like – he would like - - -

15 No, I mean to yourself?--- Pardon?

Just to yourself?--- Yeah.

You take it in to yourself?--- I wanted advice on the – yeah, conflict of interest.

20 My point is, you see, it looks like from the records – and we must work on the records. We, the Commission, must work on the records – that you have been asked for further information. You see in the first paragraph, "I refer to our telephone conversation last night in relation to the supply of certain Sky Channel agreements. I have spoken to Bob, Bob has advised that there is no need to go into such depth."
25 You see that? So it looks like she's rung you about the information the barristers want. And you've come back and said look, the information is irrelevant. Just give me advice about these things: conflict of interest and corporate activity; doesn't it?--- No. I think I know – I think I can remember what that was about.

30 Okay, good?--- The Sky Channel agreements are confidential to the clubs. There's a – there's a lot of them. There's a lot of detail in them. It would've been quite costly for a barrister to go through them. And I said no. I said all I'm looking for is what's the conflict of interest corporate activity problem. Is there a problem? That's what I was asking for, and probably what I was originally asking for. But it is what it says.

35 Well, I think you were addressing then the reason you said that rather than the fact that you'd said it. The reason being, you're saying, it would be expensive. You're saying the reason you said don't worry about that part is because, you're saying, that would be expensive?--- It would be expensive going through each individual
40 contract.

45 Yeah, that's right. That's what you're saying?--- I mean – and I didn't think – I didn't think at that stage it was necessary to go to that expense of a barrister going through individual Sky Channel contracts when really we needed to get up and go it because that wasn't going to serve any purpose in going through the Sky Channel contracts.

Okay?--- What the purpose was is to see whether – where everyone stood in the – in the frame.

5 Have a look what she says to you at 296, please?--- Yes.

And obviously she's telling you it's about – it's necessary for them to give the advice about those topics to have that information. That's what she's saying; isn't it?--- Yes.

10 And then if you go over one more page, please, at 297. "Racing Queensland Limited requests that you no longer proceed with this matter at the present time. I confirm that the VCGR has informed Bob that they are of the opinion that there is no conflict of interest."?--- Mmhmm.

15 Is that what happened?--- Well, I'm not sure; right? But I think that the original idea of the opinion was to see whether there was any problem with Racing Queensland and me in particular - - -

20 Yeah?--- Putting this together and doing it.

Yeah?--- And I'm certain at the minute the depth of the contracts was a matter of cost of going through every particular contract at that particular stage. That's the best of my recollection.

25 So we gave up on the idea of getting a senior barrister's advice about conflict?--- It appears that was.

30 Yeah. It certainly does appear that way. In fact, that's what happened; didn't it?--- I said it appears that way. I'm not sure.

Well, you were the one wanting the opinion or the advice from counsel. I'm just asking you finally, did you get an advice from counsel?--- I don't know. I can't remember.

35 There isn't one around?---I beg your pardon?

There isn't one around?---Well, I can't remember getting one. No.

40 All right. In fact, there isn't one around from Mr Cooper QC who was originally asked to do it, but wanted some information and wasn't provided with it and then told to stop?---Well, I haven't got an answer for that.

45 No. But it seems like you had a role in it at the time of making the decision, "Don't worry about the advice now"?---It appears that way from the paperwork, yes.

Yeah. So over the luncheon adjournment, Mr Bentley – last night we received a statement from Tracey Harris and I think you may already have seen a statement - - -?---Yes.

5 - - - from Tracey Harris and you've answered it in your second affidavit?---Yes.

She's provided last night another one. Would you mind reading it for me, please, so I can ask you questions about it?---Yes.

10 And read it with your barristers and so on. Well, you know what I mean?---Yep.

You can talk about it and we'll continue after lunch?---Okay.

Thank you, Commissioner.

15

COMMISSIONER WHITE: Thank you. Thanks, Mr Bell. All right. Thank you. Adjourn until a quarter past two. Thank you.

20

THE COMMISSION ADJOURNED

[12.57 pm]

THE COMMISSION RESUMED

[2.16 pm]

25

COMMISSIONER WHITE: Thank you, Mr Bell.

30

ROBERT GEOFFREY BENTLEY, CONTINUING

[2.16 pm]

EXAMINATION-IN-CHIEF BY MR BELL

35

MR BELL: Could Mr Bentley see his first statement, please. When you're ready, Mr Bentley, would you mind going to paragraph 43, please. I'm particularly interested in 43(c), if you don't mind reading it, please, and then I'll ask you some questions when you've read it?---Yes. I've read it.

40

In that paragraph, you speak of management of the conflict by means of the declaration, the non-participation in Product Co meetings, etcetera, don't you?---Could you just draw me to that sentence to save me reading all through again?

45

Sorry, say that again?---Could you draw me to the sentence?

Yes. I'm looking particularly at the last two lines of the page 14?---Yes.

And you're referring there to your management of the conflict?---Yes.

5 And in particular, you make the point that you didn't play any role in the deliberations involving Tatts and it – insofar as it was dealing with the control bodies in Queensland?---I'll just ask you to phrase that – the first bit again, please.

10 Yes. Where you say this in the last two lines and continuing page 14 of your first statement, you say, “As a result, I never took part in any deliberations on the board of RQL which may conflict with business concerning the Tatts Group”?---I agree that that's correct.

15 Yeah. What business would conflict?---I think what would certainly conflict would be making decisions about any body that was in opposition to Tattersalls would be one.

Like the other bookies – the internet bookies?---Corporate bookmakers, betting exchanges. Absolutely, yes.

20 What else might be?---Setting the fees for the corporate bookmakers or Betfair.

And they were done by modelling within Racing Queensland, weren't they?---They were done by Racing Queensland staff, yes, for Product Company. There was no – Product Company did not have an executive.

25 Yes?---And prior to the amalgamation, it was the same - - -

Yes?--- - - - because the other [indistinct] weren't sufficiently of any size to have a situation that they could do it.

30 Yes. I understand. So those two areas were areas that you were conscious you would not play a role?---Yes.

35 In particular, could you define the role that you considered you couldn't play in relation to race field information, please?---The role that I could play?

Could not play?---I don't think I should be playing any role.

40 Okay. And does that involve any role in relation to race fields' information being the subject of charging bookmakers – internet bookmakers and so on and how much?---Yeah. That's certainly the role. The only involvement I would say that – I mean, that I needed to have was, I mean, what was the table outcome which is not a conflict.

45 Yes. So your role as chairman that was okay was to assess how the wagering revenue was going from whatever source; bookmakers, corporate bookmakers or, for that matter, Tatts - - -?---In total.

- - - so long as it was just looking at the total?---Yes.

I understand. But other than that, it would have a fence around for you and you wouldn't engage?---No. I wouldn't engage in any decisions over those issues.
5 Correct.

Okay. You see, that's what I was asking you this morning. I want to be very careful to understand how you managed it because, for example, if Mr Hanmer was chairman of Product Co and you didn't go to the Product Co meeting, I can
10 understand that you didn't vote. I've got that. That's pretty simple. But if, for example, you had conferences with Mr Hanmer about the way he would vote or should vote, would that be an area you could embark upon?---No. That's a conflict.

Okay. And that didn't happen?---It did not happen. No.
15

Okay. In particular, as I understand it, I think you made this point, did you not, in your supplementary statement in relation to what Ms Harris had said in hers. Do you remember that?---I remember making a supplementary statement and I'd ask you to draw me to the thing.
20

Yeah. I will. That's a good idea. Thank you. Could Mr Bentley see his supplementary statement, please.

WITNESS: I have it.
25

MR BELL: You've got it?---Yes. Thank you.

If you go to the heading Harris and I'll find it for you in a sec. Yes. On page 5 at the foot of the page, please, in paragraph 30. If you read that to yourself, I'll ask you a
30 question about it?---Yes. That's correct. I wrote that.

And that's your point, isn't it, that you were, as chairman, entitled to look at the figures, but just not engage in determining the relationship between the bookmakers and the control bodies?---No, no. That's not – I don't accept that fact.
35

Well, you define it, please?---What I'm saying is that I needed to know where – in total, where the sources of revenue were actually coming – coming from, whether it was Tatts or bookmakers or Betfair. I mean, it was essential for budgetary purposes.

Okay. So, now, see if I can get this right. I want you to correct me. What I understand you to say is you needed to know what the figures in fact were so you could be involved in budgeting?---Yeah. It was important to the budget, yeah. Absolutely.
40

Well, I just want to get it straight. You tell me if I'm wrong?---No. Just - - -
45

I'm understanding you to say - - -?---You made a comment to say I could be involved in the budgeting. Obviously as chairman I was very interested in the budgetary situation of the company and most chairmen are.

5 I did, yeah. Yeah. Exactly. So what I'm understanding there is that somebody handed you a sheet with the figures on it. That was sufficient?---The totals, yes.

Well, the totals. Yeah?---Yeah. But I also needed to know what each club was doing as well. Clubs, total of corporate bookmakers, total of Betfair, total of betting
10 exchanges.

Okay. I don't really understand clubs when we're talking the revenue just yet. Could you help me with that, please?---Well, we're talking about revenue. I said revenue and wagering are probably two different issues.

15 Okay?---Looking at clubs, I was referring to the wagering, how much they were getting on course and those sort of things, right, what was being bet on their races per code, per venue, important.

20 Okay. Let me just see if I get this. I'm looking at your supplementary statement. Let's see if I can get what you were referring to in it. I would be interested in wagering information and that would be where it came from, which club races and so on as well, would it?---Yes. In total.

25 Sorry?---Yes. Is that in the same paragraph?

Yes. Paragraph 30 of your supplementary statement?---Yes.

30 So where it says Wagering Information, am I to understand that not just to be the total of the wagering figures that were coming in for a certain period, but where that wagering was taking place throughout the State?---Yes.

I see. But in the end, are you saying to me that the way it could work was that you could be given a sheet with figures on it and that would be all you needed to proceed
35 with your engagement about budgets and decision-making otherwise?---Yeah. The actual individual turnover of a particular bookie was not of real – was not of interest. What was of interest was the group of bookmakers or the group of betting exchanges.

Yes?---Individually, that didn't matter – didn't matter to us.

40 So if you found out that one group was earning more than expected or less than expected, how would that impact upon the business of the racing control body?---I – I would have think that there is always a shift from month-to-month, week-to-week, depending on the – the corporate bookmakers, depending how they go. But it
45 doesn't really affect the overall business. The – the bottom line is the most important thing. What is the – what is the total? Where is it coming from?

Yeah. I understand that?---And they're all betting on the same program.

5 You see, what I'm trying to be sure about, so that we're clear, both of us, is that where you swear in paragraph 30, "I would be interested in wagering information" – well, putting aside, "would be interested", I understand you would be interested, as chairman; of course you would. Wagering information is the figures for wagering information for a particular period and who was earning that information - - -?---As a group?

10 - - - who was earning those figures - - -?---Yeah. As a - - -

- - - as they're divided up throughout the state. Is that what - - -?---As a group, and as well as – south as well.

15 Yeah. Now, besides being interested because you were chairman, how does that affect your job as chairman? How do you use it so I understand that now, please?---I use it when – when I'm having discussions with the product manager about how he's putting that wagering program together. Is he maximising the amount of money he's getting from the board to put into certain areas to get a certain return?

20

I see. You mean like infrastructure planning, for example?---No, no. No. Wagering planning.

25 I see. Tell me about that. I don't understand that?---Well, the race – the race program – attached to the race program is also prize money.

Yes?---And location – how much was allocated to country racing - - -

30 Yes?--- - - - or that sort of thing. It all has a bearing on what's actually happening. Is one particular area suffering because I mean the prize money's not good enough, or is there a drop-off in wagering in a certain area?

35 Got it?---Can we do something to – to arrest that, because that's our revenue. Is it because we've got a substandard racing program, or do we need to improve it? What's happening with the breeders? Do we need to up – up QTIS, take QTIS down?

40 Got it?---Those sort of decisions were needed and I had to have a handle on wagering.

Okay?---And a lot of the wagering information I could get from Tatts anyway.

45 Yes. Yes. It wasn't confidential?---No. It's not confidential; it was published.

Okay. Now, you were responding to what Harris had said in her statement of the 19th of August in paragraph 30, weren't you?---Yes. Well, under Harris, I guess I was. Yes.

5 Yeah. Now, over lunch I hope you've had an opportunity to read her supplementary statement that she - - -?---Yes. I did.

Okay. Now, the part I'm particularly interested in to ask you questions about - - -?---May I have a copy of it, please.

10

Yes, of course. The part I'm interested in, Mr Bentley, to discuss with you, please, is first paragraph 21?---Yes.

15 Now, in the first sentence she says that the modelling and its basis was discussed at meetings with Carter and you?---I deny that.

Okay. So that would be part of the area where you had a conflict?---Absolutely.

20 Why's that?---Well the - well, the modelling - if Product Company were going to make decisions on how much the - the bookmakers were going to be charged, of course it - of course it's a conflict.

Because you'd be having a role in charging a particular amount to competitors of Tatts?---No.

25

No?---Yeah. Well, that's what would have been the final result.

Yeah. Yeah?---I mean I'd see - I saw that as an absolute conflict.

30 Yes. Okay. So I've got it right, I think, haven't I?---Yes.

Okay. I'm reading on from the second sentence now: "During these meetings, Bentley would give Carter and I direction on the approach to the review." What do you say about that?---I say it's wrong. I deny it.

35

"And in particular, the course RQL was to take in relation to (a) matters for the modelling that Carter and I were undertaking, such as the variables to be included, such as whether to consider a gross wagering approach to calculating race fees." That's wrong?---That's wrong.

40

"And (b) the approach to be taken in dealing with wagering operators such as Sportingbet. Specifically, I recall reviewing an agreement in relation to Sportingbet which I had agreed with Mr Carter. I was then told by Mr Carter that Mr Bentley wanted it changed and was not provided with any reasons"?---That's not correct.

45

Deny that completely.

So you didn't tell Mr Carter that?---No.

5 Okay. "At the board meeting of RQL that I attended after the amalgamation, an update on race fields information was presented to the board. I recall that during this presentation, Mr Bentley declared a conflict and excused himself from the meeting." Do you – is that what would have happened, in your recollection?---In my recollection, yes.

10 Okay. But the catch part really is the next sentence, paragraph 24, do you agree, where she contends that a number of – I'm sorry. She doesn't contend. She says, "A number of days after the board meeting, myself and Mr Carter were asked to meet with Mr Bentley and Mr Hanmer. In preparation for this meeting, I was asked to present an update on race information fees, including modelling, addressing the various variables and scenarios such as the effect of the basis of charging the percentage to be charged"?---No. I wasn't at that – that meeting. I wouldn't participate. That – that's an obvious conflict.

15 So therefore it's clear, isn't it, that if Harris is to be believed, you would definitely have a conflict attending that meeting?---Yes.

20 Okay. And were there occasions when you and Mr Hanmer talked about those topics?---No. We did not.

Okay. Did Hanmer - - -?---Just one moment. Just one moment.

25 Yes. Go?---Obviously, I would be aware at the end of whether Product Company or Mr Hanmer or Harris or whoever had made a determination that they were going to go this way. Yes. I would have been – been aware of that. Can't use the information for any other reason, but I would have been aware, absolutely, that that's what they'd decided. But I wasn't part of the decision.

30 No. But the technical part, don't you think – I suggest to you, and I'm looking for your input – the technical part comes when Mr Hanmer tells you of a decision – and you're the chairman – and wishes to discuss it with you?---Mr Hanmer's never ever – he is very much aware of my conflict, very much aware, and he's very protective of the Product Company situation.

35 But that's the part, isn't it, that has to be the subject of strict management to make it work?---It sure does.

40 Okay. Now, your position on Harris' second statement is that from paragraph 21 to 24, she's got it wrong?---She's certainly got it wrong. I can't answer about Kevin Seymour. I don't know – I don't know what his – his position was at – at Harness Racing prior to that.

45 Sorry?---I – she mentions Kevin Seymour has always removed himself from buildings in 25.

Yeah. Yeah. Yeah?---I can't – can't comment to that. I don't know.

No. That's right. But you recall that she had said earlier in the first statement that you had asked her to say things about what had happened which she didn't accept. Do you recall her saying that?---I recall her saying that in a statement - - -

5 You. But you deny that, don't you?--- - - - which I – which I've denied completely.

Yeah. Now, the relationship between yourself and Seymour – you have had time together on the board of Tatts?---Yes.

10 For some years?---Yes.

And did that – did you have a good relationship during that period?---I considered we did. Yes.

15 Did that relationship change at any time?---Not until the infrastructure plan became available. In fact, I mean I had nominated him to be chairman of – of Tatts at one stage.

20 In September '10 it became not so good?---September '10. Oh, I just don't know the - - -

Okay. That's fine?--- - - - exact – exact time.

25 But anyway, when the plan was revealed?---Yes. It was. Yes.

Okay. I've got it. Yeah. Okay. Now, I think, therefore, I'm understanding your position in relation to the wagering information. In relation to the Race Fields Information Legislation that came to be a topic for discussion, what role were you able to play in relation to that?---None.

30 Sorry?---None.

35 Did you consider that was part of your area for conflict or potential conflict?---Certainly potential conflict, yes.

Okay. And in that regard, when I say Race Fields Legislation, do I include Race Fields Legislation as part of the area for conflict and the development of it in Queensland?---Well, the development of Queensland and what they charge is certainly an area of conflict. The end result, once it's changed, then there's not an issue. But it is certainly an issue once – once it's been determined – or up until the time it's been determined by what the charging would be. But then it just becomes part of wagering revenue.

45 Yes?---Because every operator is operating on the same program so we're not making a special program for corporate bookmakers and another one for the [indistinct]

Yes. I suppose the difficulty that you saw was that these corporate bookmakers were going to competitors or were competitors of Tatts?---Well, they were certainly competitors of Tatts and they were paying no [indistinct] to the industry. It was a problem.

5

And so when the idea of Race Fields Legislation arose, that's why you had a conflict because you'd be promoting that they contribute to the industry like Tatts?---I don't know about it – but promoting but I mean they would – they would've needed to be able to – they should be paying a product fee to the industry, yes. That – that's – that goes without saying.

10

But in that area you didn't play any role?---No.

Okay. Did that include dealing with the government about encouraging them to bring in legislation?---No. That was left to Mr Hanmer. Did you encourage the government to bring in Race Fields Legislation in Queensland?---No. I certainly made them aware of the problem though.

15

How did you do that?---I think I wrote in – wrote in the paper – maybe a letter. I'm not sure. Or Mr Hanmer may have done it. I'm not sure. But I mean I – it was certainly a problem. And I think that it was an industry problem – leaking of revenue.

20

And just so I'm sure I've got it right – what was the problem?---The problems were the corporate bookmakers weren't paying a fee.

25

Okay. What that means is they weren't contributing to the industry but they were betting on it?---Correct.

Yeah. Mr Bentley, I wanted to ask you some questions about your knowledge of the Race Field – I'm sorry, finished with that. Yes, thank you. I wanted to ask you some questions about what was public knowledge and presumably your knowledge about the Race Fields Legislation and how it came to have an impact on the industry?---Yeah. I was also chairman of the Australian Racing Board.

30

Yes, you were?---It came up at different times. It was promoted by New South Wales – the breakdown of the gentleman's agreement.

Yes?---It wasn't, in my opinion, done for the good of the industry. It was done for the good of New South Wales.

35

Yes?---Because they had an in their Product and Program Agreement a clause but they didn't have the clawback clause that is in the product agreement here.

They were set to win out of it weren't they?---It was a – it was a big windfall for Racing New South Wales.

40

45

Do you mean – sorry, go on?---The gentleman’s agreement was really a wonderful agreement for the industry where everyone could use each other’s products for free.

5 Yes?---And the smaller states, Queensland included, were getting a bit of a free ride on it on Melbourne and Sydney racing. So it worked out pretty well. New South Wales then promoted this situation of the breakdown of the gentleman’s agreement and commenced to take on the corporate bookmakers.

10 Yes. Just trying to define what your concern was. I do understand the gentleman’s agreement and I do understand that the effect of the gentleman’s agreement would be that the different states did not charge each other for use of information about racing in their own state?---That was the gentleman agreement, yes.

15 Yes?---There were – actually was Queensland – if I take an example – Queensland citizens betting on New South Wales racing. There was no clawback either way. It was just – just free product for the particular industry.

Yes. It just lay where it lay?---Yes.

20 And insofar as Queensland were concerned, the expectation was that they were just about line ball?---Yeah, well, we – I think up until about 2011 were net exporters but only slightly.

25 Yeah. So now I’ll take you to some documents because I want you to comment please on how it developed, particularly in relation to Queensland. So if you don’t mind I’ll have a bundle put before you and I’ll ask you to go to the first of the documents I want to show you which is document at number 32. I’ll just let you have a look through that. You tell me when you’re ready?---Yes. I’ve scanned the document and if there’s a particular thing you want to draw me to, I’d appreciate it.

30 No. No. Just the point you make. It was about then when New South Wales announced this – that they were going to bring in legislation. That it looked like they were going to bring it in like Victoria had done. But that had nothing to do with the gentleman’s agreement at that point did it?---No.

35 That developed later, didn’t it?---Yes.

40 So then, could I ask you to go to 33, please. Anyway, I’m showing you a board minute of Queensland Racing on the 2nd of February 2007. And in particular, would you turn over to Race Fields Legislation, please, which I’ll give you the page in a minute. I think it’s on page 12?---That would be correct. I don’t recall it but that would be correct.

45 And Hedges – he was the director of Integrity, was he?---He was.

Yeah. And what he advised was that he was to keep the board informed as to developments about the legislation called Race Fields Legislation, as it unfolded?---Yes.

5 Okay. So it seems then that all of the board, including yourself, were conscious that this was in the public - - -?---It was in the public domain.

And would affect the industry?---Every – it was in the public domain. It was in the newspapers. Everyone – everyone in the industry was aware of it.

10

Okay. And then if I ask you to go to tab 34, please?---Board meeting of the 4th of April?

15 Yes, please. And what happened was, you'll recall, the legislation about race fields was challenged by one of the corporate bookmakers called Betfair. Do you recall that?---Yes, I do, yes.

And there was a litigation about it which went to the High Court?---That's correct.

20 Yeah. On page 12, please, Mr Bentley, if you don't mind. In 4.19?---Yes.

You can recall that the bookmaker took the matter to the High Court and lost?---Yes.

And the position was that the legislation was then valid?---That's correct.

25

Okay. And then, if I ask you to go to 35, please. I'll let you have a look at that – see if it refreshes your memory and then I'll ask you a question. It's a memo from Mr Tuttle, the CEO to you dated 28 April 2008?---Yes. Yes. I've read it, if there was a particular paragraph.

30

The particular paragraph is the last one – the last new one on the second page. “In terms of the obligation supply of Australian race product, Product Co must, under the provisions of the Product and Program Agreement, provide this to UNiTAB”. Do you see that?---That's correct.

35

Okay. “And failure to do so causes TABQ to obtain the equivalent of the Australian race product from any other source and, in doing so, may incur a third party charge. The amount of the PPC”?---I beg your pardon?

40 “Third party charge” - - -?---Yes.

“Must be reasonably commercial having regard to the need to maintain continuity of the Australian race product”. It seems that he sent you this memo [indistinct]?---Mmm.

45

Do you recall at the time that Tuttle had sent you this position, as he saw it, under the Product and Program Agreement?---Yeah. I would consider that that was his position.

5 But it was pretty important, wasn't it, that position? Wasn't it important to the racing control bodies in Queensland?---That is more – is a statement of fact.

Yeah. Except that [indistinct] legally there was a question about whether or not they had an obligation – if they had a right to charge Queensland Racing and the
10 Greyhound Racing and so on through Product Co, that would be a question of law, wouldn't it?---I think – my understanding was that's the terms of the contract.

Yes. Exactly. So if the contract catches it, then it can be claimed by Tatts against Queensland Racing?---Yes. That's the – as far as I know, the implied conditions of
15 the contract - - -

Yeah?--- - - - but I don't think anyone laboured under any other impression.

Let's talk about that just for a moment. You use words that I understand, but just so
20 we're precise about it, do you mean that the legal document would create a certain outcome in relation to third party charges in respect of the Race Fields Legislation and it would depend upon how one construed that agreement as to whether or not it was right that Tatts could charge it on to the racing bodies?---Look, I can only comment on the physical side of this. I understood that to be – what is written there
25 is what I understood to be the clauses in the Product and Program Agreement, as I understood it.

Always?---Yeah. I've always understood that. Yes.

30 Okay. You never came to doubt that, Mr Bentley?---No.

Not once?---No.

Did you hear - - -?---Not to my – I'm sorry. No. I always thought that that was the
35 case and it was written in thing – in the contract.

Did anybody have a different view?---I think two board members at one stage did have a different view. I'm not – I only found that out some time later.

40 Anybody else?---Anyone else? Yeah. David Grace. Yes.

Okay. You found out about that, didn't you?---Yes.

Okay. We'll come back to that?---Malcolm Tuttle told me.

45

I beg your pardon?---He told me that David Grace had a different view.

Who told you that?---Malcolm Tuttle.

Are you sure it was Tuttle?---Yes.

5 You're quite sure?---Yes.

Okay. So your position is that when Tuttle wrote this, this was an area that you wouldn't get involved in and that's just a statement of fact by him?---Yeah. That's all it is. Yeah. That's how he saw it and I guess that's how I see it too.

10

You see, I just want to emphasise the seriousness of it. Do you agree that it would have serious financial consequences, whether or not that was right, what he said there?---As I said to you, I understood that was the terms of the contract.

15 No. I know. I was asking you about a different question. Did you see that as an important question – financially important question?---Well, actually, I didn't turn my mind to the - - -

Did you later?---No.

20

You never turned your mind to that?---No.

Are you sure about that?---Because I always understood and from my discussions at Tatts, that was the clause in the contract and that was it.

25

Your discussions at Tatts? I thought you didn't discuss it at Tatts because you had a conflict?---I – when Mr Tuttle told me and Mr Grace had advice, right, I think I said to Dick that Malcolm would be ringing and there's an issue with Product Company over the Product and Program Agreement. I informed myself that that – when I spoke to Dick and that was the – he said that is written in black and white and we've always understood that to be written in black and white and that is not the first time I queried him.

30

I want to talk about the subject I asked you about. You said, "my discussions at Tatts". I want to hear about them?---Well, my discussion at Tatts - - -

35

Yeah?--- - - - was my discussion at Tatts on just that subject when I asked Dick about that.

40 Precisely?---Yes.

So you - - -?---That and that only.

You discussed that question with Dick McIlwain, didn't you?---I asked him the question, is that correct?

45

Yeah. Exactly. You did. How did you see that, asking that question with him?---Because Tuttle told me there was a problem with the Product and Program Agreement on the clawback arrangements.

5 No. I didn't ask you that. Let's talk about what I asked you. How did you see that question that you asked him in relation to your conflict?---Well, I've answered that, I think. I said that, I mean, as far as I was concerned, that was a part of the contract.

Yeah?---I mean, I wasn't going to interfere in it.

10

Okay?---But, I mean, I need to inform myself, was that in fact correct.

Good. Did you do that?---Yeah. I asked Dick McIlwain, is that correct, and he said yes.

15

Okay?---That's as far as I know was the end of my involvement in that particular issue.

Let me demonstrate something to you so you understand my point. Over the relevant period that we're to inquire about, \$91 million was charged by Tatts to Racing Queensland and Queensland Racing and the other two control bodies because it was contended by Tatts that this was a valid third party charge, \$91 million. You thought it was a good idea to ask Tatts whether it was chargeable as the chairman of Queensland Racing?---I asked - - -

20

I don't get that. Why did you do that?---I asked Tatts, I mean, was that correct and was that the correct interpretation.

But why would you ask the people who of course want it to be the situation, Mr Bentley?---Well, where else was I going to ask?

30

You could ask a lawyer who's representing the company you're the chairman of. That's a good start?---Well, wouldn't that be a conflict?

Well, it might be a conflict. That was the problem you had?---That's right. That's why I asked Dick McIlwain, was that correct in the contract. I see nothing wrong with that.

Okay. Do you really not see anything wrong with asking Tatts - - -?---I don't see - - -

40

Are you saying Dick McIlwain from Tatts, "Are you really entitled to charge all this money to the companies I'm chairman of?"?---I didn't ask him that particular question.

45

Okay?---I asked him was that correct in the contract.

What's the difference from what I said to what you said?---Well, you're elaborating on what I actually said.

5 I'm trying to make it simple. Mr Bentley, I'm trying to make it simple so we talk about the same thing. Now, let me try again. I understand you so far to say that you appreciated that this new issue was going to arise and Tuttle, in this memo, gave you his view about the way it would pan out?---I don't think that – no. He didn't – he said – he's made a statement and that's how he saw it.

10 Yeah. And you talked with Tatts about the way they saw it?---Yes.

And you accepted that - - -?---I asked Dick McIlwain. I mean - - -

15 Yeah. And you accepted that, did you?---Well, there was nothing I could do about it, either side. I mean, that was an issue that was closed. I needed to know for my own mind what was the situation.

20 Can I understand what you mean as chairman of Queensland Racing at the time and chairman of Racing Queensland later, what do you mean by saying, "I couldn't do anything about it"?---Well, there's nothing I could – if I would've interfered with that – it was a Product Company issue. I would've been completely in conflict.

25 Yeah. That's true. But if you thought that the lawyer who had been somebody you had trusted over some time as the best corporate lawyer around, he'd said, "They can't charge this". Don't you think you had some obligation to say to the Product Co board, "Do something about this"?---No. It's a conflict.

30 Okay. I understand your position. That's good. Let me ask you to turn over the page, please, to 35. I'm sorry, 36. This was – I'll let you read it in a sec. This was an email you wrote, Mr Bentley, to Laura Haines and to Tuttle in relation to the gentlemen's agreement. Do you see that?---Laura Haines. That's from [indistinct].

35 Your part is the part in upper case, I think, isn't it?---Upper case is mine, yes. I'm not too good with a computer.

And it's about – the subject is the gentlemen's agreement?---Yes.

40 You write, "This is a letter I would like Laura to prepare for the Australian Racing Board and addressed to Andrew Harding. Please feel free to add or delete. Kind regards, Bob". That's right, isn't it?---I would've had someone else prepare that, I guess.

45 Yeah. Okay. And that was about the gentlemen's agreement, wasn't it?---Well, I haven't read it fully at the moment.

Okay. You read it. I'm sorry. You're right?---Will you let me read it?

I should've let you read it?---Yes. That's a series of questions to Andrew Harding, yes.

5 And - - -?---I don't see any conflict in that.

No. Okay. That's good. But your position there is – you're writing a letter, aren't you, or you're getting a letter prepared for you to write about the gentlemen's agreement and its importance?---For the next ARB meeting, yes.

10 Yeah?---And I see that as part of my duties.

Yeah. And the point was that you had a view about the importance of the gentlemen's agreement to stability throughout Australia?---I think that I enunciated that before - - -

15 Okay?--- - - - in answer to another question that you - - -

Well, that's what the letter's about, isn't it?---Yes.

20 Okay?---And I enunciated that to you before that, I mean - - -

You did?--- - - - I believed in the gentlemen's agreement for the sake of the majority.

25 You did tell me that, but I was asking you about the letter to make sure it's the same thing, you see?---I consider it to be the same thing - - -

Good, good?--- - - - and in the same vein. I'd need to sit down and read it a little bit more to be any more specific than that.

30 Okay. Well, you take your time?---Yeah. Yes. I've read it.

Okay.

35 COMMISSIONER WHITE: It goes over the page, Mr Bentley, just in case you - - -?---Thank you – thank you, your Honour.

- - - think you've read the lot?---Yeah. The letter is a series of questions proposed to get people thinking about what happens when there's a breakdown – the theme of it is what happens in the breakdown of the gentlemen's agreement.

40 MR BELL: Absolutely. Exactly?---And it is – it is very much pro-racing. It's to do with their revenue and the future of racing, and I think it was entirely appropriate to write that letter.

45 Okay?---I don't see one piece of conflict in that, because I'm talking about Tabcorp, Tattersalls [indistinct]. We need to have a proper product there.

You don't need to defend it to me; I understand what you're saying?---No. I'm just saying.

5 I'm just showing you the letter to say - - -?---Yeah. That's correct.

You see, my point of showing it to you is to show that you had views about this and you knew what the issue was, you see? Do you want me to show you what I mean - - -?---I don't think I've ever disagreed that I had views about it.

10 No. Okay. Well, let's make it clear together?---I mean everybody – everybody in the industry has a view.

15 Okay. Well, in particular to come to your view, about the fourth – fifth paragraph your letter: “The future of the gentlemen's agreement appears to be coming under threat as states search for an answer to the inroads of corporate bookmakers and Betfair. There needs to be a clearer understanding by all administrators if the abandonment of the gentlemen's agreement is being considered. The knock-on effects of an abandonment will ripple through state governments and the breeding industry and possibly change the composition of the Australian industry forever”?---That was my view at the time and still my - - -

20 Yeah. So pretty serious topic?---Absolutely.

25 Yeah. And it was a pretty serious topic which you had an interest in?---Yes.

In fact, you had two interests in it as it turned out, didn't you? It would affect not only Queensland Racing, but it would affect Tatts as well?---It'd affect Tatts and Tabcorp.

30 Yes. Well, okay – and Tabcorp?---I mean I – I wasn't singling anybody out.

But I'm not so interested in Tabcorp, because you're not a director of it?---It would affect everybody.

35 Yeah. Exactly, but - - -?---Because I mean what – what this could very well do, not handled properly, would bring down the demise of the racing industry through no revenue at all.

40 Yes?---If – if you look at the history of what's happened in England and those other countries that this has happened to and – I mean it's absolutely decimated their industry.

45 Okay. So we are agreed, are we, that you had a view on this and you were concerned about the knock-on effects that it would have if the gentlemen's agreement fell over?---Yes.

It did fall over?---Yes.

Yeah. We'll come to that. So then if I asked you to turn to page – to the document behind divider 37, please?---Is this the Racing Administration Act?

5 This is the Racing Administration Act of New South Wales that was proclaimed on the 25th of June 2008. I'll just let you look at it for a sec, please?---Is there a particular section, rather than reading the whole lot?

10 Only section 33A(1), where it would seem that the legislation involved the requirement in New South Wales, going forward, for the granting of approval to a person to publish a New South Wales race field in respect of the race if one was to carry on a wagering business. Okay so far? I'm not asking you to construe it; I'm just bring to your attention that - - -?---Yeah. That's right.

15 - - - this legislation came in - - -?---I haven't – I haven't read - - -

Okay?--- - - - New South Wales legislation, and they have a different system. They don't have a – a Product Company down there. They - - -

20 No. They don't, but that's not - - -?---No. It's a different – different administration system.

25 Yeah. I understand, but it's not really relevant to the point that – Product Company's existence – to the point I'm making: that this legislation came down – you remember it came down - - -?---Yes.

- - - and it was to catch the corporate bookmakers?---Correct.

30 Yeah. And the way – the scheme New South Wales introduced was to catch them by making them get a licence if they wanted to use New South Wales race field information in their wagering business?---That's correct.

35 Okay. And – thank you. If you turn over to 38 – I'm sorry – 38. Yes, please. This appears to be an email from Michael Lambert on the 1st of July 2008 to the other directors in relation to this topic. I'll let you see the email – you can see it went to you?---Yes.

And it's titled “New South Wales Race Fields Legislation”?---Excuse me. It went to all the directors.

40 It did. Yeah?---Yes.

45 It did go to all the directors, and then the attachment you'll see is headed “New South Wales Racing Legislation”. There does not appear to be any reason to doubt, is there, that you received that?---No.

Okay?---I don't recall it, but - - -

No. That's okay?--- - - - I'm certain – Michael Lambert was – was very active on this particular issue.

5 Sorry? What did you - - -?---Michael Lambert was particularly - - -

Yeah. Okay?--- - - - and interested in the issue - - -

Okay?--- - - - because of his – his background.

10 And what was his background, that was relevant?---He worked very high up in the New South Wales public service at one stage.

Okay?---He – and worked for ANM – AB Anambra.

15 Okay. Now, in the second line, under “Issue”: “This paper was prompted by a conversation I had with Bob Bentley where he indicated serious concerns about the New South Wales race fields legislation, and I said that I did not understand its intent and how it worked.” That's what he's saying - - -?---Yes.

20 - - - prompted him, you see. But that - - -?---That's in – that – which line? Where is that?

That's the second line?---In - - -

25 Under the heading “Issue”, right at the start in the attachment to the email?---Right. Okay. Yes. I – I would have – I would have indicated to him that I had serious concerns about the New South Wales race fields legislation, and if you revert back to what we were talking about before - - -

30 Yeah?--- - - - my paper to the ARB that I had concerns for the industry.

Yeah. I know you did. Now, if I ask you to go further down, coming to the bottom of the page, please, I'll let you read that last new paragraph on the page?---That is consistent to what I've told you previously.

35 And what you mean by that is, “That's what I thought as to how the agreement worked, and Lambert looks like he was saying the same thing”. Is that what you were meaning to say to me?---No.

40 Okay. I'm sorry. I got it wrong?---It is understood – okay – that is my understanding of what is the product and program agreement, and I – the way I read that, Mr Lambert also at that stage understands that too.

That's exactly what I said to you - - -?---Yeah.

45

- - - but – yes. Thank you. I understand now. And in particular it says, “Then UNITAB will net off that fee against the fee payable to QR” – Queensland Racing?---Yes.

5 Okay. And this is part of the seriousness of the situation, isn’t it, because this is the – one of the knock-on effects?---It’s a knock-on effect caused by the breakdown of – of New South Wales doing what they did in their legislation.

Yeah?---Yes.

10

But in particular, serious for Queensland Racing but not so serious for Tatts. You see why?---Or – or Tabcorp.

Hey?---Or Tabcorp.

15

Yeah. Or – okay?---And that – and that’s - - -

I’m not meaning to distinguish - - -?--- - - - and that is the reason why I brought this to Michael Lambert’s attention.

20

Exactly. I’m not meaning to distinguish Tabcorp and Tatts; I know they’re competitors. But the reason I’m referring to Tatts all the time is because Tatts and Queensland Racing are both your concern at the time, see? So please forgive me not mentioning Tabcorp all the time?---Okay.

25

My point is for Tatts – if Lambert’s right what he says there, this doesn’t have a big impact on them?---No, because it’s in the product and program agreement.

30

Exactly. But for Queensland Racing it does?---Yes. If they – if they suddenly slip into – into a situation where they’re a net importer.

Yeah?---If they’re a net exporter it doesn’t make any difference.

35

That’s right?---And that’s the reason to me that I was so keen on the wagering, to make sure we could continue to be a – an exporter, not an importer.

Not so sure that’s completely right. Let’s test that. Let’s talk about that?---Okay.

40

If the government in Queensland brings in legislation that is designed to bring in a contribution from corporate bookmakers to the Queensland Racing industry and they succeed, that would mean Queensland Racing gets more income than it was yesterday?---That’s correct.

45

Okay?---Or if – on a level playing field.

Yes?---Yes.

5 Okay. If, under the product and program agreement, Tatts could not knock on this charge that they would pay to New South Wales, Tasmania and so on, Queensland would win, wouldn't they? It wouldn't matter if they were an exporter or an importer?---Yeah – it would've been – it would've – it would be to the detriment of Tatts.

Correct. Now, that's important, right? That was important for you as a Tatts director, of course, wasn't it? Course it was?---Course it was.

10 Yeah. And it was important for you as the chairman of Queensland Racing too?---Yes.

And therefore, it was really important as to who was going to cop this?---It's – and I'll revert back to what I've said before - - -

15 Yeah?--- - - - and the Product Company issue is not a Racing Queensland issue.

20 Okay?---I've done – as chairman of Racing Queensland, what I could do to bring it to the surface. Lambert and Product Company are their – in my opinion, are taking over from the situation here because I have a conflict.

Well, we'll see whether that's right in a minute?---Right.

25 Well, let's stay with this. You accept, don't you, that you were very conscious at this time that the knock-on effect of this new legislation would have a big impact on either Tatts or Queensland Racing, Greyhound Racing and Harness Racing in Queensland, depending upon how the third party charge worked?---I considered the third party charge was set in concrete. It wasn't a problem for Tatts.

30 Okay?---It was certainly going to – unless we got some income from corporate bookmakers it was a problem. I keep reverting back to the fact that, I mean, I understood it was in the – it was in a contract with that.

35 Yep. But anyway, you agree with me, don't you, that the intent of the government was to benefit Queensland Racing by taxing, in effect, corporate bookmakers who weren't contributing to the industry?---Yes.

40 And that didn't happen did it, for Racing Queensland or the Queensland industry, the way things unfolded?---I think there was – look, as I said to you before, it's a Product Company issue but I don't think that we were receiving any income for a while under the scheme that the Product Company put forward. I think they put forward they wanted to charge the same as New South Wales on turnover. The bookmakers and the betting exchangers wouldn't pay. It was starting to have a – a debilitating effect and Product Company changed it.

45 Okay. Over on another topic – when the government brought in the legislation in Queensland, they were seeking to get more revenue for Queensland Racing, weren't

they?---I thought that the intent of the legislation to ensure that the bookmakers pay their fair share.

5 Yeah, exactly. To Queensland Racing?---Correct.

Yeah. So start again – the intent of the Queensland Government when it brought in legislation was to benefit Queensland Racing by making the bookmakers contribute to the industry?---Correct.

10 That didn't happen, did it?---Not in – not in the first instance, I believe.

Well, it didn't happen ever. It still hasn't happened?---I can't – can't speak for now. But the corporate bookmakers were at the time that I ceased to be chairman of Racing Queensland – there was income coming from corporate bookmakers. How much or who it was coming from I don't know.

Well, you know why I'm suggesting it hasn't happened is because Tatts are knocking on the charge that they are paying in New South Wales and Victoria and Tasmania et cetera to Queensland Racing and then Racing Queensland?---But they were always doing that - - -

Well, you see - - -?---Under – under the agreement.

25 They were always doing it but was it ever brought into question, Mr Bentley, is the point?---The question's not for me. The question's for Product Company.

Okay. Now, insofar as you were chairman of Queensland Racing at this time – it was important wasn't it? Whether or not you played a role in decision making – it was important, wasn't it?---Revenue is always important to every business.

30 Okay. Well, answer this question. This revenue was important, wasn't it?---The total revenue or the revenue you're saying that – that you're alluding to as not being paid.

35 Tell me both then? Give me the answer to one and two?---Well, I keep reverting back to the agreement. I mean, I don't think – as far as I was concerned in my mind, that wasn't an issue. That was there. If Product Company wanted to take it on that was fine. I wouldn't be taking part in that.

40 Okay?---Revenue was important that the industry was getting everyone who was using our product should pay and I don't think that anyone would disagree with that.

45 Yeah. That's right. Anyway, the sad outcome of the legislation was as it unfolded, Queensland Racing didn't benefit?---Well, I – I beg to differ on that. I mean, the legislation did allow Racing Queensland to charge corporate bookmakers and we were getting some revenue.

Yes. But in the end after the netting off by Tatts - - -?---But the netting off as Tatts, as I said to you before; (a) is a Product Company issue and (b) I mean that's in the contract.

5 Okay - - -?---That's how I understood it and I'll be – keep answering that question exactly the same way.

Okay, good on you. Now, I'll give you one last chance at my question and that is this. The impact of the new legislation in New South Wales, Victoria and
10 Queensland was very important to Queensland Racing?---Revenue is important.

Okay. But this particular revenue was very important wasn't it?---You're talking about the – the whole revenue, the total revenue or the revenue for Racing Queensland?
15

The revenue - - -?---The revenue for Racing Queensland is important.

Okay?---If there's a contract in place and there and Product Company – it's up to them to take it on. It's not up to Racing Queensland or me in particular to take it on.
20

Okay?---Because I have a conflict.

Did you ever discuss it with Hanmer?---Discuss what with Hanmer?

25 What he was going to do about it?---Maybe I – maybe I said, you know, we're losing revenue, what are you going to do about it, yeah.

How much revenue were you losing when you said that?---I can't – couldn't comment.
30

Just give us a feeling for it?---Corporate bookmakers?

No. How much revenue were you losing which you did discuss with Hanmer?---I didn't – I – as I said before, I mean I consider we had a contract. We weren't losing revenue.
35

About 500 - - -?---And that wasn't discussed with Hanmer. What was discussed with Hanmer was – and I thought I was answering your question – what income are we not getting from – from corporate bookmakers – what are we losing. And losing as far as I was concerned was the corporate bookmakers. They were not paying their way.
40

You know when you were looking at the figures after about November 2008, \$500,000 odd dollars – \$500,000 was not there because of this third party charging.
45 Was that important?---Course it – absolutely.

What did you do about it?---The third party – you’re talking there’s \$500,000 missing - - -

5 Yeah, \$500,000?--- - - - because of the clause in the contract.

Yes?---Didn’t – didn’t enter my mind, sorry.

Okay. Good?---And it wasn’t a part of my considerations.

10 Okay. I’ve got you. Would you be good enough to go to tab 39, please. And on page 5 at the top right hand corner, you’ll see – when I say page 5 I’m referring to you where it is. The page number is in top right hand corner. Half way down you see the topic 2.3 legislation to restructure New South Wales Racing. See that?---Yes.

15 Lambert provided advice to the board?---Yes.

And Lambert – in the second paragraph – “Lambert advised that he was meeting with the CEO of Racing New South Wales. See that?---Yes.

20 Lambert then concluded, “that while the legislation may have the modest benefit of charging a fee to wagering operators who are currently free writers, the negative impact on the way racing is paid will have major windfall financial impacts both positive and negative and you’ll break down the gentleman’s agreement with negative consequences.” Do you recall discussion about that?---I recall the
25 discussion because that’s the discussion I had with Lambert.

Yeah?---And also, I mean it’s – it’s – pardon?

30 Yeah. But it was at the board meeting too, wasn’t it? This is at the board meeting?---Yes.

So Queensland Racing board - - -?---There’s no decisions being made. I mean that’s a discussion. I mean that’s a part – part of the business.

35 I agree with you. I can’t see a decision either. The board agreed with Mr Lambert’s interpretation of the New South Wales legislation. Do you see at the bottom?---Yes.

40 Did that involve you?---I agreed with Lambert’s interpretation of New South Wales legislation, yes. Because it was parallel to what I talked to him about and what he wrote to me.

I thought Race Fields Legislation wasn’t your area?---Race Fields Legislation – making decisions about the Race Fields Legislation is not my area. Understanding it is.

45 Okay. When the board agreed with his interpretation, did you agree?---Oh, I can’t – can’t remember.

Looks like it - - -?---But I mean I – I would’ve agreed because – because what he’s saying is correct.

5 Yeah. It looks like you agreed if we believe the minutes, doesn’t it?---I just said that I – I agreed because I mean that’s what that – that coincides with what we discussed and what my thoughts were about it and my earlier thoughts about it.

10 Okay?---The breakdown of the gentleman’s agreement was terribly – was a disaster for the industry, in my opinion.

Okay. Please go to 40 – divider 40, which is the next one?---Yes.

You sent an email to Mr McIlwain on the 9th of July 2008?---Yes.

15 And it related to this topic, race fields, didn’t it?---Yes.

And you say, “Dick, this will have a major impact if New South Wales goes ahead with this. Bob”?---Yes.

20 And the “go ahead with” part was New South Wales imposing the fee on Tatts and Tabcorp, for example?---No. It was more to do with the breakdown the gentlemen’s agreement will have a major impact if this happens.

Yeah. Exactly?---Yeah.

25 That’s what it was, wasn’t it?---Yeah.

30 You think about what I said. If the - - -?---And will have a major impact on Tatts and not necessarily revenue if Racing Queensland – where we have our industry. If we’re not funded correctly and the prize money’s not there, the quality of racing goes down so the quality of wagering goes down. Yes. That’s correct.

35 And the last couple of words you use then, “Yes. That’s correct”, were you saying my proposition was correct?---No. I’m saying that that email was correct. It will have a major impact.

40 Yeah. But in particular, you see, what I’m talking about is you’re saying to Tatts – McIlwain, if the gentlemen’s agreement breaks down, this’ll have a major impact?---I don’t get the significance of your question. Of course it’ll have an impact. It’ll have an impact on Tatts and it’ll an impact on the racing industry.

Okay?---I don’t see that that’s either – that’s a conflict either.

45 And the next document, please, at 266?---Are you talking about the email from Barry Fletton?

Yes?---Yeah. I haven’t seen that before.

No. But the topic, did that reflect what you thought too in your discussions at Tatts board meetings?---I can't remember whether we discussed it at that particular time.

5 Okay. But what seems to be apparent from this is that Tatts were concerned about this knock-on effect too, weren't they? Of course?---I don't see any significance in that, sorry. I can't answer a question on that.

10 No. I'm not asking for your judgment about significance, Mr Bentley. I'm asking you whether Tatts were concerned about the knock-on effect of this New South Wales position under the legislation at the time?---I - - -

You were on the board, you see?---Yeah. I know I was on the board - - -

15 Yeah?--- - - - and I'm trying to remember.

Okay?---I think that – in relation to this particular email, that's between Dick and Barry - - -

20 No doubt about that?--- - - - and I think – the way I read the email is that there's not a lot of problems for Tatts.

Did you discuss it at the Tatts board level, do you recall?---I think - - -

25 I don't mean the email. I mean the topic?---The topic of the gentlemen's agreement?

Falling down?---On - - -

30 Falling down?---On numerous occasions the gentlemen's agreement came up in discussions.

35 Okay. I'll rephrase that. The falling down of the gentlemen's agreement. Did you discuss that?---I think – yes. We probably would have. I would've made my thoughts known exactly the same because I would've sent that article to the ARB for discussion.

40 Yeah. And in particular, did you discuss the fact that you believed that for Tatts – it wasn't a problem for Queensland because they could knock it on to Queensland?---I mean, that was a decision for the executive of Tatts to make that decision, not me, but I didn't think that Tatts – personally, my own thoughts, I didn't think that Tatts would be seriously affected.

45 Yes. That's right. But did you - - -?---My concern was for the Queensland racing industry and we're not talking about the clawback. We're talking about the breakdown of the gentlemen's agreement.

In that concern, what did you do about it?---Well, there was very little I could do to alter the fact - - -

Okay?--- - - - except bring everybody's attention to what the problem was. I spoke to Lambert and the board then took over from – the Product Company board took it on from there.

5 Okay. And did you tell the Tatts board that your view was that there was no problem for them because they could make it a third party charge against Queensland Racing?---No. I wouldn't be asked that question. I mean, that question would've – may be made as a statement from the CEO. I would've made that statement at Tatts board.

10

Did you discuss it with McIlwain?---I probably discussed in general form. I'd only be surmising.

15

And what - - -?---I don't recall any particular specific thing. We talked about a lot of things.

20

Did anybody at Tatts disagree with your view that it could be knocked on to Queensland Racing?---I don't think it was discussed in that particular issue of Queensland Racing. We were talking about the gentlemen's agreement per say for the whole of Australia - - -

Okay?--- - - - because Tatts is a whole of Australia company.

25

Just turn over to 267, please?---I can tell it's from Dick.

The language?---Yes.

30

Yeah. Anyway, you tell me when you're ready?---Yeah. I think at different times Dick had expressed those views.

35

Okay. And his subject heading seems to sum it up, does it, that he's talking about the penny begins to drop on race fields in relation to wagering?---It was always a concern of Tatts that the corporate bookmakers weren't paying and, I mean, the intent of – we all – I think in the true spirit of the word, the Race Fields Legislation brought in by New South Wales did intend to catch the corporate bookmakers, but a side effect that I don't really know whether they were aware of at the time was the clawback situation and the advantageous situation that they placed themselves in.

40

Maybe this is the part you were referring to. The third sentence, Dick says, "We should remind this unruly New South Wales mob that we already pay and then tell them to get stuffed"?---Yep. He's right about the unruly mob.

45

Yes. But telling them to get stuffed means - - -?---Yeah. I can't comment on that. That's Dick's email.

No. I know it is?---It's nothing to do with me.

I know it is. But a position that Tatts were taking – is that a reflection of the position Dick took at that time?---Dick's the CEO. That's a position he possibly enunciated at different times - - -

5 Okay?--- - - - but I don't know whether that's the board position.

No, no. I accept that?---I mean, we wouldn't have discussed that in those particular terms in a board meeting.

10 Okay. Very good. If you go to 268, please. I'm sorry, not 268. Go to 41, please. This is a letter, you see, to Racing New South Wales from Barry at Tatts, who's the Chief Executive of UNiTAB?---I'm finding it hard to comment on other people's letter.

15 No. I know you are. It is hard.

COMMISSIONER WHITE: Do you want Mr Bentley to read the whole of that letter, Mr Bell?

20 MR BELL: Probably not. Thank you, Commissioner. Mr Bentley, to make it, I hope, easier, the last new paragraph on the first page of the letter. "UNiTAB wagering is the principal source", etcetera?---That's correct. That's a correct statement.

25 And that was the position that UNiTAB were advancing against New South Wales which seems sensible?---Yes.

And just over the last page – the second page and the last paragraph?---That's what I believe is the Product and Program Agreement.

30

Yeah. And so do you recall that Tatts were taking that position at that time against New South Wales?---I believe that Tatts has always taken that position.

35 Okay?---That – the Product and Program Agreement was an enforceable legal document.

Well, that's right. In New South Wales – when New South Wales were considering imposing a fee on Tatts, they were going to tell them to get stuffed, in effect?---I can't remember that being said.

40

Okay. The next document, please, is 42 and this was New South Wales Racing coming back to UNiTAB?---Is there a particular paragraph to save me reading it all?

45 Yes. The third paragraph, "No exemptions from the requirement to obtain approval from Racing New South Wales under the Act had been granted to any wagering operator. Racing New South Wales would strenuously object to any such

exemptions being granted to UNiTAB wagering or any other wagering operator”?---Mmm.

5 “Accordingly, UNiTAB wagering will need to apply to New South Wales Racing for approval under the Act to publish New South Wales thoroughbred race fields”?---As I say, that’s the first time I’ve seen that letter.

Yeah. But that was the start of the - - -?---But that level of detail didn’t necessarily go to the board.

10 No. But that was the start of the [indistinct] to the gentlemen’s agreement, wasn’t it?---Yes.

That’s what you were worried about?---That is exactly right.

15 Yeah. And turn over the page. The last sentence, “UNiTAB wagering arrangements with RISA which expire in November related to the supply to UNiTAB wagering or formatted consolidated wagering information for which UNiTAB pays a fixed annual data processing and formatting fee”?---That’s right.

20 And they were advancing the argument, weren’t they, that – you’ll see that Queensland Racing was CC’d on that?---Yes.

It may have come to your notice. It’s hard to remember, is it?---I can’t remember it coming [indistinct].

25

Yeah. Okay. But the substance of it did come to your notice I think, didn’t it, that New South Wales were pushing back against UNiTAB?---Yes.

30 Yeah. And then 44, please, Mr Bentley. The part I want you to look at here is this is Tatts writing to Queensland Racing, Mr Tuttle, on the 24th of July 2008 - - -

CCOMMISSIONER WHITE: I think Queensland Racing, if there was a bit of a slip. Did you say New South Wales Racing?

35

MR BELL: I should’ve said Queensland Racing whatever I said. I’m sorry, Commissioner. This was a letter from UNiTAB to Queensland Racing, Mr Tuttle, the chief operations manager, on the 24th of July 2008 about its position in relation to the developments with Race Fields Legislation. Now, in particular, I was going to ask you, please, to go to the fourth paragraph commencing, “Clause 9.5 and 10.2”. If you read that and the next paragraph, please?---Yes. I’ve read that.

40

Okay. That was UNiTAB notifying Queensland Racing that it was going to start deducting under the third party charge; wasn’t it?--- Yes.

45

And that was a position that you must have appreciated was going on, either from your position at Tatts or your position at Queensland Racing?--- Well, Malcolm Tuttle would've advised me of that.

5 Yeah?--- I mean, that's -- that's an issue that -- I mean, it's non-conflicting. And I mean, it's an information issue that I need to be aware of.

Yeah. So clearly enough, this was a problem that needed to be dealt with?--- Well, I still revert back to -- I mean, there was a problem. I mean, the problem was that in
10 the legislation there was a clawback in ours and not in New South Wales. That was the problem.

No, the problem was The Product and Program Agreement's clauses; wasn't it?--- Yes.

15 Yeah. So go to 45, please, Mr Bentley. This is the letter you wrote on behalf of Queensland Racing to the treasurer. This was about race fields information; wasn't it?--- I'm just reading it at the moment.

20 Yeah?--- That's correct.

I thought you said to me earlier that you didn't involve yourself with this race fields information?--- Oh, that's -- that's - - -

25 Or the race fields legislation?--- That's certainly an issue. That's a non-conflicting issue.

No, I'm talking about what you said earlier, not about that?--- Yeah.

30 Can you come back to what you - - -?--- Yeah, I'm alerting the treasurer - - -

Okay, just - - -?--- Of a situation - - -

35 Mr Bentley, come back to what I asked you, please. I thought you said before lunch you didn't engage in talking to the government or anybody else about race fields information or race fields legislation?--- Well -- well, I should've added where I have a conflict.

40 Okay. So just address that for me, please?--- Well, I don't see that - - -

I tried really hard and I'm going to keep trying really hard to understand where you saw the line to be drawn. I thought I had it clear but I don't?--- Well - - -

45 Could you tell me please where you considered race fields information or legislation did not cause you a conflict?--- Where I was actually a part of the decision making process.

Okay, I've got it. And what decision making process is included in that definition? What are the events that you consider decision making processes?--- What – what – corporate – the decision (a) to charge the corporate bookmakers and (b) how much they were charging them.

5

Okay. What about in relation to the third party charge to – that Tatts might exercise in the future under the Product and Program Agreement. Was that part of the area - - -?--- No, that - - -

10 - - - where you wouldn't go?--- I wouldn't go there. That's a – that's a – a [indistinct]

But that's race fields too; isn't it?--- That's a – no, that's a conflict of – that's certainly a conflictive issue. And that is part of the – part of the contract.

15

You see, we're not straight you and I on what you consider the areas for conflict. Because I was certain that you said – and I'll check on the transcript. I was certain you said to me this morning you didn't engage on race fields legislation in relation to promoting it to the government. Do you recall saying that?--- I don't recall saying that.

20

Okay?--- But it's possible that I may have said that.

25 Okay. But it was wrong?--- Yeah. Well look, as I said, the area that now I consider to be a conflict is the decision making area of what to charge, who to charge and when to charge. Promoting – promoting the situation of corporate bookmakers is promoting an issue for them to pay. It's promoting an issue for income for Racing Queensland. And in no way does it affect Tattersall's. And that's what we're talking about. All this time we've been talking about it. We're not – the [indistinct] you're

30 talking about and what I'm talking about, we must be across purposes. Because I'm talking about extra revenue from bookmakers. Because I already said to you I accepted that the contract with Tatts was cut and dry, watertight, that was the end of it.

35 I'll show you how we're not across purposes, but I think I'm suggesting to you you're fudging around the place and changing?--- Well, I'm not.

I'll tell you why. Do you want me to tell you? So that you have a good chance to answer it. The position you were taking with the Queensland Government was

40 promoting they bring in the same legislation up here?--- Yes.

Yes. The reason for that was because if they brought it in, Queensland could charge people outside the State for use of its race fields information?--- Correct.

45 Yes. And then, it could be seen in Queensland as a net exporter or at least a line-ball in relation to charging between the states?--- No, I don't – I don't really - - -

Well, let me make it more clear so I get a straight answer. Were you not promoting to the Government to bring in this legislation in Queensland so that it would be like New South Wales and Victoria?--- Yes, for the express purpose of getting income for the Queensland racing industry. Yes.

5

Yes, that's right. But not only that, it wouldn't get income for Queensland because New South Wales would be charging tax and tax would charge Queensland Racing?--- That's correct.

10 Yeah. So it would make nothing. Queensland would make nothing?--- That is in the contract.

Okay. But don't you - - ?--- I mean, I'm promoting it – I mean, if it's in a contract and it's considered to be a contract.

15

Yeah?--- And there's an obligation there for that to happen, I've already said to you that – I mean, I thought we're at a disadvantage. You're talking about income that maybe – maybe Tattersall's should've been paying Racing Queensland. I've taken that right off the table as far as I'm concerned. That – my view of that – that was part of the contract. We're talking about the additional income that can come from charging race fields. And I feel I was perfectly within my right to promote that to the government to get additional income for Racing Queensland. And that is certainly not a conflict.

20

25 You see, the problem for you I suggest, Mr Bentley, in relation to this promotion is you start with the belief that it was Tatts that was going to be charged from New South Wales and Victoria and that it could pass it on to Queensland?--- I – I - - -

You started with that, you've already said it?--- I dispute. I dispute that situation.

30

You dispute it?--- I don't agree with that.

Okay. Let me try again because I think you're wrong in denying it in the sense that I think that is your position. You believed before you wrote this letter that there would be no problem for Tatts. It could pass on the New South Wales charges and the Victorian charges to Queensland Racing?--- I understood that to be correct - - -

35

Yes?--- According to the contract, yes.

40 So when you promote this legislation to the government, you know that the outcome really is only going to be that Queensland comes back to line-ball?--- I wouldn't – yeah, well that's correct.

Yeah?--- Yeah, they would come back to line-ball. But I don't – I don't see the significance of this.

45

Okay. Well, it's significant - - ?--- I'd like you to explain it to me.

Sorry, go on?--- I'd like you to explain it.

5 Yes. You see, when it came to race fields information and the way it was being dealt with, it had a big impact on what would happen to – in – what would happen in Queensland either to Tatts or to Queensland Racing, one or the other. And that all turned on whether Tatts could pass on the interstate charges for the Product and Program Agreement; you see?--- No, I don't see.

10 Okay?--- Sorry.

Well, I know, Mr Bentley – I'm sorry, I shouldn't have said that. Mr Bentley, I suggest to you you knew the importance of the question of whether the Product and Program Agreement allowed Tatts to pass this charge on from New South Wales or not?--- I'd always take it as a given.

15 Yeah. But you knew it was important?--- I said to you it was a given. It was a contract.

20 Yes, you said it was a given but you didn't answer my question. Was it important?--- I didn't – I – I didn't consider; right? As it was in the contract, I didn't consider that it was an issue for tax. I didn't think that Racing Queensland possibly didn't have a position to take. But I wouldn't stand in the way if they wanted to test it.

25 Have a look at the letter that you're promoting to the treasurer. Have a look at the last sentence, the last paragraph on the page. "As a result of this fee being levied against UNiTAB, UNiTAB will pass on the associated costs to the three control bodies?--- That's right.

30 The product fee payable to the three codes of racing in Queensland will be diminished?--- If we'd be – yeah.

Now, whether – sorry, go on?--- If we become a net importer.

35 That's right. Well – no - - -?--- Because Racing Queensland – under the legislation, Racing Queensland was also getting product fees coming back into Queensland from the use of the Queensland product.

40 Yes?--- Right?

But if there was no legislation up here, it would be the case that they would certainly notice a diminishing revenue coming to them from Tatts; wouldn't they?--- Diminishing revenue from the corporate bookmakers because they wouldn't be paying anything.

45 No, no, no, no, no. From Tatts because Tatts would - - -?--- Why [indistinct] – why - - -

Tatts would be charging the charges New South Wales had charged to it?--- Correct.

Yeah. And it wouldn't be gathering any back from betting on Queensland races
- - -?--- That's correct.

5

- - - from the corporate bookmakers?--- Yes, you are correct.

Yeah. So what would happen is when the next invoice came in from Tatts,
everybody in Queensland would realise that they're \$500,000 down a month unless
10 this legislation was brought in?--- That's correct.

Yeah?--- That's the purpose of the letter. That is correct, yeah.

So you see, in this part of your job, I'm suggesting to you that this was the part
15 where you had conflicts?--- Well, I'm - I can tell you now, I don't consider I did.

Okay. Thank you. So anyway - - -?--- I mean, I consider that that letter is to the
benefit of Racing Queensland, absolutely. It's got, really, nothing to do with Tatts.

20 And who else is it to the benefit of?--- Racing Queensland.

Okay?--- I mean, to get the income.

25 And also, of course, to greyhound racing?--- Yes, and harness.

And to harness racing?--- Yeah.

So in the end, just turning over the page, you were promoting to the treasurer to
move quickly to develop similar race field legislation to combat the financial impact
30 that the three codes of racing will feel?--- Yes.

Okay. Now, I think we've made it perfectly plain and it doesn't need to be said
again, does it, that you assumed that your position as you stated it to the treasurer
was right. That Tatts could pass it on?--- Yes.

35

That's was an assumption you [indistinct] ?--- No, I've never - - -

Did you ever come to question it later?--- No.

40 Okay. Let's see if that's right. Now, at this time when this question was being
considered, did Tatts get any legal advice about its entitlement to charge the third
party charge under the Product and Program Agreement?--- I believe they did. Can't
confirm it but I believe they did.

45 Well, the chairman says they didn't in the statement given to the commission. He
said no advice, no legal advice, was obtained?--- I thought they did.

No, they didn't get it until the enquiry was announced; you see? So just talking about back then - - - ?--- I thought they did. I'm sorry.

5 Okay. Well back then, do you think you had discussions about it at board level at Tatts?--- Not while I was there.

But we know that you didn't leave very often from Tatts board meetings?--- Yes.

10 But this was a very important issue?--- I thought there – I thought we had legal advice some time ago.

Okay. We're talking now about - - -?--- When are we talking about? I haven't been to a Tatts board meeting for four months.

15 We're talking about 2008?--- Oh, okay.

Yeah?--- I thought we got it then.

20 COMMISSIONER WHITE: How are you travelling, Mr Bentley?--- I'm fine.

Do you need a break this afternoon?--- No. I'm fine thanks, your Honour.

We'll finish at half past - - -?--- If you want to continue, I'm fine.

25 All right?--- It's up to you.

We'll rise at 4.30 so if you've got that in mind. Thanks, Mr Bell.

30 MR BELL: Mr Bentley, I want to suggest something to you. Not in documents at the moment. At about this time, and I'm talking in particular at the end of July 2008, you had a conversation with Dick, Dick McIlwain - - - ?--- Oh, yes. Well - - -

35 - - - on the telephone when you talked about race fields legislation. And you said to him that you thought that Racing Victoria would renege on the revenue and offset combination and go to the New South Wales method of turn over?--- Possibly.

40 And indeed, is that what happened? Victoria followed New South Wales; did they?--- No, from what I can remember, Victoria – we might have followed the Victorian method of gross profit. I think they may have reverted to – look, I'm sorry. I can't - - -

Okay?--- I'm struggling.

45 Just turn over then, I'll – at 46, please. This is a – the bottom email, one that's from about halfway down the page. Just read the first paragraph to see if it refreshes your memory about a conversation you had with Dick?--- Yeah, the first – I possibly would've had that.

Okay?--- I mean, that's an – that's not an information issue. There's no decisions in that.

5 Okay?--- That's just passing on information to Dick.

And would you go to 48 please, Mr Bentley. And what I'm referring to at 48 is a board minute of Queensland Racing of the 8th of August 2008; aren't I? Have you got that?--- Yes, I've got that one.

10 Okay. Over on page 4 at the top of the page you'll see the page numbers. Have you got that?--- Yes.

And then at the foot of the page, 2.2 at the board meeting, charging for product, New South Wales fields legislation; see that?--- Yes.

15 Okay. I'll just let you read that section for a moment?--- At 2.2?

Yes, just one – 2.2, please?--- Yes.

20 Just the section under 2.2; have you got that?--- Yes.

Okay. So Mr Lambert provided advice to the board on his understanding of the intent of the New South Wales - - -?--- Yes.

25 - - - legislation. You advised the board that you'd written a letter to the minister regarding this issue?--- Yes.

And the minister was taking the matter to cabinet next sitting?--- Yes.

30 Okay. The board will wait for a response from the minister?--- Yes.

Okay. I'll just have you go back one document, please. Meaning to the document of divider 47. And this is a board paper for the meeting we've just talked about from Mr Lambert in relation to race fields legislation and the gentleman's agreement. Do you see that?--- Yes, I do.

35 Just read the purpose part, please?--- Yes.

40 And he records that the purpose of the paper was to determine an approach to take at the next Australia Race Board meeting on 14 August - - -?--- That's correct.

Eight. 2008?--- Yes.

45 You would be at that meeting?--- Yes.

Okay. And was this something that you considered caused you a conflict?--- No.

Okay. Then if you go down under the heading Background and Issues. Read, if you don't mind, the paragraph commencing, "Since the privatisation of the TAB"?--- I've read that paragraph.

5 Okay. And then over the page, please, on page 2 at the foot of the page. You see his paper speaks of the terms of the Product and Program Agreements; you see that?--- Mmhmm.

I'll let you read that paragraph?--- The terms of Product and Program - - -
10

Oh, to yourself, I mean?--- Yes, I mentioned that earlier in the day.

Yeah, you did. And the point of it is, isn't it, that Lambert at least from his work on it had reached the position of identifying that for Queensland, Tatts he thought could
15 net off the fee. Whereas it wasn't the case in New South Wales?--- That's correct.

So for New South Wales, he records, there is no provision by which Tabcorp can pass through a fee in assessing other states' racing product?--- Yes.

20 You were conscious of that at the time?--- Yes.

So that was significant for New South Wales. They were going to be big winners out of this in the sense of - - -?--- Yeah, joiners. Yes.

25 Yeah. Whereas Queensland weren't?--- No, Queensland – there was nothing in this for Queensland.

Yeah. And did that bring to your attention the necessity to get a reliable view about the Product and Program Provisions for Queensland?--- I think I've said that before
30 that – I mean, I relied on the contract. I believe the contract was correct. I had discussions with Dick McIlwain about it. I thought we got advice on it but evidently you say that we didn't.

You mean Tatts - - -?--- I have to accept that.
35

You mean Tatts got advice?--- Tatts, yes.

Yes. No, I'm talking about the other one. Queensland Racing?--- Wouldn't be for me to get the advice.
40

No?--- It would be for Product Company to get the advice.

But forget about taking a part in it. What about the idea of getting it? As chairman, wouldn't it be an idea to say get advice?--- Well, I mean – I'd have a conflict of
45 interest there.

Mr Bentley, do you think it's a conflict to say to the other directors, "I don't want to be involved but please, we need to get an advice; this is serious," or something like that?---No. I didn't say that.

5 No. Well, I know you didn't, but did you consider it would have been wrong to say?---I did.

But you see, the difficulty is for you that - - -?---It was of issue for – excuse me - - -

10 Yes?--- - - - for interrupting. It was an issue for Product Company.

Yes. But - - -?---It's a flow – yeah. Sorry.

It's a significant financial issue for Queensland Racing, no doubt about that?---Yes.

15

Yeah. But what I'm suggesting is did you ever consider the idea that the solicitor who acted for Queensland Racing a lot, and was highly respected – Mr Grace – ought be consulted about this?---No. I left that up to Product Company.

20 Did you never think to tell them, "Get advice from Grace"?---If I thought about it, I would have done it.

So you didn't - - -?---I didn't.

25 - - - do it?---No.

Did you never go to Grace yourself?---Not for that issue. No.

30 You're sure about that?---Well, as sure as I can be sitting here without any documentation, relying on my memory for – from a years ago. Yes.

But it's pretty important, isn't it?---It's important. Yeah.

35 Because your point throughout, and throughout the time you were chairman, was to deny you engaged in areas of conflict?---Conflict – as far as I was concerned – and I think I've said it before – it's the decision-making. I mean I needed to be informed of all these issues. I had – certainly I had dialogue with other directors about different things, and up to this stage I mean there's no – I can't see any decision-making there.

40

Okay?---I mean this is information and I was bringing them back information as well.

45 Okay. When you say, "I had discussion with other directors about different things," were you meaning to alert me that you had discussions about the position in relation to third party charges under the Product and Program Agreement?---No. I don't remember ever having that discussion

Well, you may not remember, but would you have even - - -?---No. As I said, I – I considered the contract to be – be – be done and dusted.

5 Yep. Okay. And your position remained that way?---It always remained that way
- - -

Okay?--- - - - and it still my – remains my way.

10 Okay?---By that token, I don't say it's right, but - - -

You still maintain the view?---I've maintained that view that that – that - - -

15 Well, why do you maintain that view? I'm interested in that, Mr - - -?---Beg your
pardon?

Why do you maintain that view?---Well, as I've said, I'll maintain the view that – I
mean that – that the contract is correct. I mean I – what I said is that I don't
necessarily consider it to be right.

20 But you know saying the contract is correct – maybe it's because lawyers have got a
funny slant on things, but what does it mean the contract is correct?---I believe the
contract was enforceable.

25 Yeah. I know, but - - -?---The clauses were enforceable. I've always - - -

What's that mean?---I always believed that.

30 Does - - -?---And I – and I haven't – and I haven't ever challenged it or thought of
challenging it.

No. I know you haven't. But you're a – at this time in 2008, you were a person in
the business of Queensland Racing who went to Mr Grace a lot, weren't you?---Yes.

35 Did you consider that it was right that somebody go to see Mr Grace about this?---As
I said, I didn't turn my mind to it; it was a Product Company issue.

40 Yes. 48, please, Mr Bentley. 48 was the minute I took you to. I'm sorry. And – 49,
please. This appears to be a monthly report for July from Tatts, and over on the third
sheet you'll see heading "Race Fields Legislation and the Gentlemen's Agreement".

Do you mind reading that, please, to yourself?---Yes. I've read that.

Sorry?---I've read that.

45 Yeah. Do you remember those discussions that Tatts – being a topic of the board's
concern at that time?---I – I don't think I remember it being the board's concern, but
I remember discussing that sort of situation. Yes.

5 Okay. And then, please, go to 50, and this is a minute of the meeting of Queensland Racing, 5th September 2008. And if you ask to go to page 5 in the top right-hand corner, it records, "The chairman updated the meeting re legislation currently in all states. Legislation will be discussed at Queensland cabinet meeting on 9 September. Queensland Racing will be consulted following the release of legislation from the cabinet." So you were on that, were you? You had the information about where cabinet was up to?---That would have – that would have been a report to the board from the Australian Racing – from a Racing – Australian Racing Board meeting – whatever all the other states were up to.

10 Right?---And it's consistent with my other letters that I wrote to the – the – to Fraser.

15 Right. And that was about where they were up to with legislation on race fields?---Well, as best I could. Yes.

20 Yeah. Okay. 51, please. Just in the last paragraph of this letter from Grace in New South Wales to Shara Murray, who was the legal officer at Queensland Racing: "Racing New South Wales will not interfere with RISA honouring the contractual commitments to UNITAB; however, that existing agreement between RISA and UNITAB is a data supply agreement. We do not believe that agreement impacts on the 1.5 per cent of turnover fee payable under the race fields legislation." Do you recall that topic coming up?---Yes.

25 And the point of it is what?---The point of it, I think, at that stage was we were going to try and get Racing New South Wales not to charge us for a period of time for the – the net-off. And that was Michael Lambert - - -

30 Sorry. Could you just say that again. "Not to charge us"?---Well, they started charging the – the export fee to Racing Queensland. Michael Lambert - - -

I'm just not sure you mean that. Do you want to think about that a little bit?---Well, the – the way I read this here now - - -

35 Yeah?--- - - - and I seem to remember that there was a bit of a leeway amongst states in the beginning, except New South Wales wouldn't – wouldn't give anybody any – any leeway whatsoever.

40 Yeah. Yeah?---I believe that Michael Lambert went to see V'Landy to see if Queensland could get some leeway as well.

Yeah?---I believe that. Yeah.

45 Tell me if this is what you mean: even though the legislation was in place in other states, in relation to Tatts they weren't charging, even though they could have for some time. Is that what you mean?---No. I think it was more New South Wales levying - - -

Yes?--- - - - levying tax for the export information.

Correct?---We were – we were trying to – to get a situation where they wouldn't do it.

5

Correct?---Give us some leeway.

Yeah. But you said “us”, and I thought you were referring to Racing Queensland or Queensland Racing. So it was Tatts, wasn't it, was looking to get that?---No. No. It was – Michael Lambert was going – going to Racing New South Wales - - -

10

Yeah?--- - - - to try and get some leeway. All right?

Yeah?---So that New – that we wouldn't have the net-off fee for a while.

15

But the point of it was that the charge would be to the wagering operators, Tatts?---Correct.

And it was because Tatts would pass it on?---That's correct.

20

Yeah. So would Tatts go down and ask for that too?---No.

Is that what was intended?---No. I wouldn't think so.

25

So – yeah. Go on?---I wouldn't think so.

Queensland Racing was taking a direct role?---Yeah. Product Company and Michael Lambert were trying – and I was aware of what was going on.

30

54, please, Mr Bentley. This was a letter you wrote to the treasurer in relation to race fields legislation on the 30th of September. I think that's right, isn't it?---Yes.

And you were, weren't you, trying to push the treasurer on to get this legislation in place, because it was going to impact negatively on Queensland?---Correct.

35

Yeah. And your point was that you were bringing him into – in the third paragraph – that it is estimated that \$438,000 would be the impact for the month?---Correct.

40

Yeah. So you must have been aware then that it was important, this question – a lot of money?---It was – I'll go back to my original statement.

Yeah?---I was – it was important to get race fields legislation up and running - - -

45

Yeah?--- - - - so that there wasn't severe impact on the revenue of Racing Queensland. The letter that you're talking about, it refers exactly to the contract and that – as far as I'm concerned, all these letters do not have any impact on that.

Okay. Now, if you turn the page to 55, divider 55, you'll see the media release from the treasurer in relation to the introduction of race fields legislation in Queensland?---Yes.

5 See that? Now, that occurred on the 4th of October. On the 8th of October, do you recall going and seeing Mr Grace about the Product and Program Agreement?---No. Not unless you show me some documentation.

Well, you see, I suggest to you that you did. You did go and see Mr Grace about the Product and Program Agreement and the issue that we've been talking about. Do you recollect that?---No.

Did you go and see him at any time about that Product and Program Agreement?---Not – not that I can – not that I can recall.

15 Okay. Well, forgetting about recalling any particular event, is it possible that you did?---I don't think so.

Okay?---I was very conscious of my – my conflict of interest.

20 Okay. So you'd be surprised if you did?---Yes. I would be.

Okay. If you'd turn over to 56, please. You see what that is? That's a diary note of Mr Grace's of the 8th of October at 7.20 am of a conference with you – Bob Bentley. See that?---Yeah.

And discussed history of Product and Program Agreement – do you see that?---Yeah.

Hard to read, I know. If you want - - -?---I can – I can read it.

30 Okay. Good. And – you read the rest of it for us, then?---If a problem, renegotiate - - -

Sorry?--- - - - with UNITAB, Tattersalls [indistinct] not me – not - - -

35 If you want to, there's a typed-up version behind it. Just have a look at that if you're having trouble?---I've only got – only got this.

I'm sorry. Show me what you've got, please. Could you bring it over, please. I see. Yes. That's a typed version of the handwritten – of a handwritten note, Mr Bentley. The typed version records – or Mr Grace records that on the 8th of October you discussed the history of the Product and Program Agreement with him. Do you deny that?

45 MR WILSON: Excuse me, Commissioner. Could we be given a copy of the handwritten note?

COMMISSIONER WHITE: I'll give you my copy, Mr Wilson.

MR WILSON: Thank you, Commissioner.

5 WITNESS: As I said, I don't recall having - - -

COMMISSIONER WHITE: Well, perhaps before you do that, could you just show it to Mr Bentley so he can see the letterhead, if you don't mind, Mr Wilson. I'll just – you can see why it's necessary to have it typed up?---Yes.

10

You've got the typed script, have you, Mr Wilson?

MR WILSON: Yes, we have.

15 COMMISSIONER WHITE: Thank you.

MR BELL: So, Mr Bentley, we're talking about you discussing the history of the Product and Program Agreement with Mr Grace on the 8th of October?---Yes. I don't recall that but obviously I have.

20

Yeah. And in particular it says, I suggest, "the intent that UNiTAB be not worse off by force of your supplying race information elsewhere"?---Well, UNiTAB wouldn't be any worse off.

25 That's true. "And if problem, renegotiate with UNiTAB Tattersalls", see that?---Is that me saying that or David Grace saying that?

That's you saying that, I suggest. "Role – me, not Tony Hamner." Do you recall making- -?---No, I don't recall that. No, I - - -

30

You don't recall it but it looks likely that it happened, doesn't it?---Well, I'm not – David Grace is – I would accept that he wouldn't put something down that wasn't there.

35 No. Well, let's talk about the conflict now. How do you go with this if it did happen on a conflict – where do we go from here?---Well, I don't remember it happening anywhere.

I know that but if it did happen and his note was not just made up – how do you deal with it in respect of the conflict question?---Well, I probably couldn't deal with it.

40

Okay. I've got it. And then if you turn over to 57, please.

COMMISSIONER WHITE: You can keep that, Mr Wilson. I don't need it.

45

MR WILSON: Thank you, Commissioner.

MR BELL: 57 you see is a tax invoice from UNiTAB. You see that? Dated 10 October?---Yes.

5 And you will see, if you look at it, the revenue is \$27.5 million approximately, centre?---Yes.

10 And then variable product fee and underneath that, less fees paid on overseas racing and then underneath that, less Race Fields legislation deductions to New South Wales – thoroughbreds \$483,000; Harness \$69,000 and Greyhound \$98,000. Do you remember that invoice coming in?---No.

Do you remember the information that's in it coming to your notes?---Not – no, not specifically but I know that would be happening.

15 So what was happening was there was about \$500,000 less coming into the three control bodies because of this outcome?---Yes. Yes.

That's pretty serious?---Yes, it is serious.

20 And do you recall that coming to your notice that, that was happening?---Yeah. I knew that there was – there was a drop off in revenue because of it, yes.

Pretty serious?---Yes.

25 Did you go and see Mr Grace?---I – I tell you I can't remember seeing Mr Grace about it.

But it looks like you did at the one earlier?---Yes.

30 Okay. Now, reflecting on that, do you recall going back to him?---I'm sorry, I don't.

Okay. With Mr Tuttle?---No.

35 Okay. You said to me earlier that you would not attend any product code meetings. Do you recall that?---I did.

Yeah. It looks, on the documentary evidence, like you did. On the 13th of October 2008 you attended a meeting of Product Co. Have you got any recollection of that?---No.

40 Any memory of that?---No.

Okay. If you turn over to 58, please. You'll see there that somebody has handwritten in your name also in attendance?---Yes.

45 Okay. And then if you go over the page you see under 5 (b), Mr Bentley declared he's director of Sunshine Coast Racing Trust as a conflict?---Yes.

- Okay. You see the topic above, Race Fields Legislation – Ms Murray and Mr Carter provided an update to the board in relation to those topics. Advised the quantum that control bodies or their agents charge for the use of Queensland racing information is to be decided by et cetera. See that?---Yes.
- 5 Do you recall now being at that meeting?---No. I don't recall being at that meeting but to me it looks more like an update of what's going on because then there was a SCRAP meeting too, wasn't it?
- 10 I'm sorry?---Was there another meeting as well there?
- Well, we'll go on but firstly, it's interesting isn't it that somebody's handwritten in that you were there?---Yeah.
- 15 Okay. Turn over to the next one which is 269. This too is a draft minute of the same meeting and somebody else has written Bob Bentley in there. See that, in handwriting?---Yeah.
- 20 Do you recall being at that meeting now?---No, I don't.
- Okay?---I find it strange – I mean if they're the only two meetings that's written – my name's written in there. No, I don't recall being there.
- 25 Well, it was a pretty important time for Race Product Co, wasn't it?---Oh, yes. Of course it was. It was very serious issues.
- And page 2 of that, you see other handwriting there from whoever it was that was writing on it – whenever that was. See that?---Yes.
- 30 Okay. Now, if I ask you to go over to 270. Have you got that?---Yes.
- This is the final minute and you see your name's missing or I should say, not there?---I didn't prepare these minutes so I – I - - -
- 35 No. I know you didn't but it's not there. Is it?---No.
- Yeah. You know who's in charge of these minutes in the end. Why don't you tell us who's in charge of them?---I don't know.
- 40 Well, you do?---The Product Company.
- The chairman is, isn't he?---Yeah, well – sorry, yes, yes - - -
- 45 Mr Hanmer?---Yeah.
- Mr Hanmer's the guy who was Deputy Chairman of Queensland Racing at the time?---Yes.

And he was the guy that Ms Harris said that you sat with and consulted with her about race information. Isn't it? That's the same guy?---Yes. Tony Hanmer's vice chairman of Racing Queensland, yes.

5 And like you, when you were chairman, you are the person who in the end signs off the minutes?---Correct.

Yeah. And he would here too, for race product wouldn't he?---Yeah. I would think so, yes.

10

Yeah. That's likely?---I notice the minutes are not signed.

Sorry?---I notice these minutes are not signed.

15 No. No, they're not signed, are they? But in the end, you'd think that somebody has not put in your attendance for one reason or another?---For one reason or another. I mean I – I – when I said to you I genuinely believe that I hadn't been to any Product Company meetings - - -

20 Yeah?--- - - -I told you I did not remember or was at the meeting that Mrs Harris said and now you're showing me something that someone's written my name in.

Yeah, I am?---And unsigned minutes.

25 Yes. That's right. I am. You see, because- - -?---I do not recall being at any of the Product Company meetings. I can't be any more [indistinct] than that.

You see, the point is of me doing this, Mr Bentley – that because you don't remember doesn't mean that you are definitely going to see a finding in the report at the end that it didn't happen. I have to test it, you see. Because if other people say he was there or documents suggest you were there, that's evidence that's got to be taken into account – that I'm raising it with you so that you'll comment.

30

See?---Yeah, sure. If I can't remember I will tell you that I can't remember but I'm certainly – when – I was quite genuine when I said I'd never been to a Product Company meeting. I was so conscious of the conflict issue.

35

Okay?---And when Mrs Harris – Ms Harris signed it in – I mean, I'd be even more sceptical about it.

40 Yes. Yes. It seems like you and she feel the same way about each other, doesn't it?---Yes.

59, please. This document, as you may see from the top of it, is in relation to New South Wales Race Fields legislation. You see that?---Yes.

45

And it was a document prepared by Carter and Murray and Tuttle for the meeting I've just mentioned. So if I could ask you, please, to turn over to the second page of

the memo to see if I can jog your memory. Down the foot of the page, you'll see a dot point commences on page 2, "Under the Product and Program Agreement between UNiTAB" etcetera. Do you see that?---Yes.

5 Do you mind reading that and the next one, please?---Yes. I've read that. That's consistent with what's in the Product and Program Agreement.

That's consistent with your view of what it means, isn't it?---Yes.

10 Yeah. Did you ever change that view?---No.

Did you talk to Mr Grace about his view about it?---I can't remember talking to Mr Grace about that, no.

15 I know you can't remember - - -?---I don't - - -

- - - but is it possible that you did?---Look, Mr Grace was very conscious of my conflict and at any time that, I mean, I looked like overstepping the mark – certainly with him, I mean, I'd pass things past him at different times. Any conversation I had with Mr Grace, if there was a conflict, he would've shut down completely. So that's why I'm very confident that whatever – that anything that I've done with Mr Grace wouldn't be in conflict.

25 Okay. In any event, you'll see in the last dot point on that page, "On review of the agreement", say the executives, "clause 9.5 and 10.2 relevantly provide that should Product Co be unable to procure the supply as required by UNiTAB, UNiTAB may reduce the product fee payable to Product Co by any amount required to be paid by UNiTAB to procure the Australian racing product for use in its race wagering business". Do you see that?---Yes.

30 Okay. Now, you see, that view is something, I suggest to you, that you came to question through discussions with Mr Grace?---No - - -

35 What I mean is this. You see, the Race Fields Legislation seems, at least, to be involved with levying wagering operators for publishing or use of race fields information in their business. Do you see what I mean?---Yes.

Yeah. Do you agree with that?---Yes.

40 Okay. Yet on the other hand, it seems anyway that the Product and Program Agreement involves a charge for supplying the information?---Look, I'm not going to get into a legal argument [indistinct].

45 No. I'm not asking you to?---I'm not sure of the legal interpretations. My interpretation of the Product and Program Agreement is those two dot points there. Now, whether they're right - - -

You know how you - - -?---Whether they're right legally or not, I haven't tested it
- - -

5 Okay?--- - - - and nor do I see any need to test it.

Okay. Why not?---Look, as far as I was concerned, it was a legally binding contract.

10 Yeah. But how did you come to that, you see, because you're a very responsible position in this business and if the law – if the court said, “No. They can't charge that”, you can get the \$91 million back. Why wouldn't you test it?---Okay. Well, I'd have a conflict if I went ahead with that.

That's funny. You're really saying that?---Yes.

15 Okay. I got it. Okay. Would you go to number 60, please. What's interesting about this, this is a letter from Mr Hanmer, dated the 14th of October, to the treasurer. Do you see that?---Yes.

20 And he's writing about the same topic, Race Fields Legislation. Do you see that?---Yes.

He's copying you in on it - - -?---Mmm.

25 - - - even though it's a letter from Product Co. Why would he do that?---I'd expect – I mean, all this stuff is information. I need to know everything that's going on.

Yeah?---Yeah. I mean, there's nothing there that I'm making a decision about. He's telling me what he's doing.

30 Yeah?---I'd expect that. I'd be annoyed if he didn't tell me.

35 Okay. Well, I totally accept what you just said. What about this then. Let me test it. If you knew because Hanmer told you that he'd got Grace's advice that said it's not deductible debts by UNiTAB, what are you doing wrong in saying, “Look, do something about it, Hanmer”?---Well, the first point is he didn't tell me.

I see. But if he did, wouldn't it be right to say, “Do something about it”?---Look, I can't answer hypotheticals.

40 Okay. Well, let me ask you to address the hypothetical. If you had known what Grace's advice was, wouldn't it be right to test it?---If I'd known what Grace's advice was, I mean, I would have to consider the situation. Yes.

45 Well, what's the “consider the situation” part?---The consideration is – I mean, I still would have a conflict. I mean, just for fact – for the fact I've seen or had the advice given to me would be a conflict.

All the more reason to have it tested, Mr Bentley, don't you agree?---No. I don't.

Why not?---It's a - - -

5 Why not?---It is a job for others. That's what - - -

This is very important?---That's what Product Company is set up for.

10 This is very important, Mr Bentley. If I demonstrate in a moment you did know about Mr Grace's advice, don't you think it's serious that you didn't do anything about it - - -?---I said - - -

- - - even if you didn't believe it?---I said we had organisations set up to do that and Product Company was the right vehicle to be doing it. Not - - -

15 Push the responsibility away to Mr Hanmer?---Not me because I had – because I had a conflict. Had I not had a conflict, possibly, yes.

20 You see, I suggest to you that the idea of saying “I had a conflict if I found out that Grace didn't accept this was deductible” just doesn't make sense to say, “Do something about it”. It's a very expensive decision here. It just doesn't make sense, Mr Bentley?---Well, as I said, it was an organisation set up to do that. That's why it's there.

25 It wasn't really set up to do that. You know that, don't you?---But that's what they're functions are.

I know, but - - -?---It wasn't some – I'm sorry, that was a slip.

30 That was a slip?---That's one of their functions to do that. I mean, that's what it's there for.

That was – the part about that was to manage your conflict, wasn't it?---Product Company wasn't set up to manage my conflict.

35 No. The board of directors was such that it would manage your conflict because you wouldn't be there at board meetings?---That's correct.

Okay?---And that's been correct since 2002.

40 Yeah. Now, if I ask you to go to 271, please. That's divider 271. In fact, I probably should leave this because I'm going to a rather large topic and it's half past four.

COMMISSIONER WHITE: I think this is a very good time to - - -

45 MR BELL: Okay.

5 COMMISSIONER WHITE: - - - come to an end and thank you, Mr Bell. Could I remind those who have an interest in attending tomorrow that contrary to what was the proposed program put on our website that on Fridays we would commence at 9.30 and finish at one. This week, we have not started until today and it does seem a little indulgent to be finishing at lunchtime tomorrow so tomorrow only, so far as I can predict what the future will bring, we'll start at 10 and go through until 4.30 in the afternoon. I hope that's not inconveniencing anyone who had relied on a finishing time at 1 o'clock. If it is someone who is very important who is here, then could you kindly raise that with counsel assisting when I adjourn - - -

10

MR BELL: Commissioner, could I raise one thing.

COMMISSIONER WHITE: Certainly.

15 MR BELL: I'm going to take out some of these documents overnight, I think. If we could have the books, I'll take the – have somebody take out the documents and then give them back to people as soon as I can.

20 COMMISSIONER WHITE: All right then. Thank you. Perhaps you can raise that with the legal representatives - - -

MR BELL: I will.

25 COMMISSIONER WHITE: - - - when I adjourn.

MR BELL: I will. Thank you.

30 COMMISSIONER WHITE: All right. Thank you. Would you adjourn the Commission, please.

MATTER ADJOURNED at 4.29 pm UNTIL FRIDAY, 20 SEPTEMBER 2013