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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

9.59 AM, WEDNESDAY, 25 SEPTEMBER 2013

Continued from 24.9.13

DAY 6

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RESUMED

[9.59 am]

5 COMMISSIONER WHITE: Mr Bentley.

ROBERT GEOFFREY BENTLEY, CONTINUING

[9.59 am]

10 **EXAMINATION-IN-CHIEF BY MR BELL**

MR BELL: Mr Bentley, two things by way of preliminary matters: the first is that
15 overnight, one of the commission staff brought to my attention that somebody in the
press had reported that your comment was that Mr Lambert was a lazy director. My
recollection was that it was Mr Andrews who you described that way?---That is
correct, Counsel.

20 Okay?---I haven't spoken to the press.

No, I know. I'm not blaming you at all, I'm just trying to ensure that people don't
suffer consequences unnecessarily, I suppose?---Okay. That's correct.

25 So the second matter I wanted to raise with you is the toxic atmosphere, as it has
been described, in which the four executives had been working leading up to their
offer of a new employment agreement on the 5th of August 2011. I think at least
prior to today you have described, or it's been described to you and you've accepted,
that the atmosphere was toxic by then?---Yes.

30 And, in particular, do I take it that that is in respect of communications with people
in the public to them and articles in the press, things like that?---Counsellor, look:
the issue really was the amount of publicity that was being fuelled, media, otherwise
in parliament, was starting to tear at the organisation from the point of view that one
thing that racing needs to do is make sure that they are in control of their code, and it
35 was breaking down their confidence in being able to work properly.

Well, what I picked up from the transcripts that have been produced by ASIC is that
Ms Murray commenced to collect a file in relation to that press?---That's correct.

40 And, if I might, that collection would, if one read it, give one a good feeling for the
toxic atmosphere as you saw it at the time?---I haven't actually perused the file - - -

45 Okay?--- - - -but I'm aware of the number of articles; it's quite considerable, and it
was affecting the staff.

Well, I've had the opportunity to look at the file, and if you want to have a look at
the file - I want to give it you afterwards too so you can comment- - ?---Yes.

- - - but the evidence in the file with respect to you does not seem like it's a seriously toxic atmosphere that was going on during that period?---Well, I haven't – to say I can't - - -

5 I know?--- - - - comment when I see the file, but, possibly, not everything is on that file either.

Okay, but you would think if she was collecting to prove it one day that some of the best might be in there, wouldn't you?---Yeah, I don't know the reason for collecting it - - -

Okay?--- - - - but I can assure you being around at the time it's all right for myself; I mean I'm used to that sort of thing, but it wasn't for the – staff are not used to it. I mean, people saying I'll put your head in a box and all that sort of thing; it was breaking down the organisation. Slowly, but surely, it was breaking down the organisation.

So because this matter is of some importance, isn't it, certainly for the commission's assessment – and that's why I'm asking you about it – because you consider that this was one of the drivers for offering a new employment arrangement for these four people?---Yes, I think so. I mean, well, they were putting up with some severe criticism from outside; not good for the industry either, and - - -

Could you be- - -?---Sorry.

You go on?---No.

Would you try and be more specific, please, about what it is that made you believe it became toxic for them leading up to the 5th of August 2011?---I couldn't give you something just off the top of my head - - -

Okay?--- - - - even though there was lots and lots of articles.

Well, what I might do is then offer you, going forward after today, the opportunity to do that and define it if you can in a further statement if you wish. You don't have to of course?---Could you clarify what you require?

Yes. Some definition to the statement that the atmosphere for the four executives leading up to the 5th of August 2011 was toxic, such that it was difficult for them to carry out their task?---Yes.

Okay, thank you.

COMMISSIONER WHITE: Could I just - - -

MR BELL: Yes.

5 COMMISSIONER WHITE: - - - continue on the same, just a little? I'm still a bit puzzled: I've seen plenty about you, Mr Bentley, and it's pretty robust, and you've obviously been able to weather that, but I'm mystified as to why the others would have come in for the kind of criticism that would make it intolerable for them without a huge incentive to stay at Racing Queensland?---Your Honour, I mean, there's a lot of phone calls, a lot of – they've got to control their actual departments and the areas, and people were terribly disrespectful in commenting on those sort of articles, but I will try and justify that to the commission.

10 Well, I'm just hoping that you might be able to have some recollection of why – there are a lot of blogs of course, but we all know that they're people who are a bit – perhaps don't have so much to do, or overly interested in a topic, but was it about the – Ms Murray, for example: she was corporate counsel, she dealt with the bookmakers for the licensing and collecting fees at a later time, but it doesn't seem a
15 controversial position to me?---Well, I've – as I say, I mean, I can't give you any specific examples, but I certainly will in due course, but - - -

Well, can you say from your- - -?---I – yeah, I think – the fair fact, I mean, a child is being bullied at school.

20

Well, on one occasion she certainly makes reference to that: that is true?---Yep.

That it was only her, and one occasion?---Yep.

25 That's unpleasant, of course. What about Mr Brennan? Why would he feel the vitriol such that he couldn't tolerate working at Racing Queensland any longer?---Well, I mean, the abuse at different times from stakeholders over the phone – I mean, I'd hear it many times over the phone, which wasn't good, and, I mean, it revolved and – virtually around some of the things in the articles that had been
30 written and the blog sites, on the press, and it was fairly constant. I mean, people come in to work every day don't really want that sort of thing to happen to them all the time; very difficult.

I'm not suggesting it's not extremely unpleasant. We've heard about those four.
35 We've heard in passing, of course, about the others who originally were considered for an incentive to stay: the administrative assistants and a few other people if they were thought not to be essential. What about the rest of the staff at Deagon? It's quite a big establishment, isn't it?---It's – it's a – yes, it is a reasonable size, your Honour. No, that didn't filter down. I mean, they were the ones that were copping the abuse, at the top. They were the people who were making the decisions and they
40 really were under a fair bit of stress, and that was my assessment of it.

All right. Look, I don't want to keep badgering you, but what sort of decisions were those four making that would bring them into such conflict with members of the
45 industry that they would be treated in an intolerable fashion?---Well, Brennan and Tuttle on the infrastructure plan; that didn't suit everybody. There was plenty of rumours about what might happen, where it might happen, and those sort of things.

Murray was getting a fair bit of abuse at different times from the bookmakers and the staff in general trying to deal with some of the clubs, and - - -

Mr Orchard?---Orchard - - -

5

Well, he's the integrity officer. He should be getting abuse, shouldn't he?---He was – yeah, but I think it was unfair abuse.

Did you?---Yes.

10

All right. Thanks, Mr Bell.

MR BELL: Mr Bentley, we'll move to a new topic?---Thank you.

15

Would – Mr Bentley, please, could he see the Racing Act 2002? I'll hand that up. I'm just going to show a few provisions, please, Mr Bentley, so that I introduce this topic for you. If you don't mind, in that Racing Act, going to chapter 3, it's styled control bodies managing their codes of racing. Have you got that now?---Yes, I've got that, thank you.

20

Okay. Section 78: you see that it provides, "The main purposes of this chapter are to provide for – (a) the way each control body may perform its functions of managing its code of racing when it becomes responsible for managing the code; and (b) particular provisions applying to licensed clubs." So that's what the purpose of the part of the legislation is about, and then the important part to introduce this topic is subsection (2)(a), "Generally, the control body performs its function by making policies about the management of its code of racing, especially about its licensing scheme for controlling the activities relating to animals, clubs, participants, and venues and about the way in which races are to be held for its code of racing." So it was – Queensland Racing was obliged, as was Racing Queensland eventually, to make policies for management. You recall that, I think?---Yes.

25

30

And the point of that was to give direction to the industry for thoroughbred racing, and then for the three codes of racing, by way of the policies that were put in place?---I assume this is talking – section 81 policies?

35

Yes, it is talking about that, but it more- -?---These are the mandatory policies – you're talking mandatory policies?

40

No. There's two sorts, which I'm going to take you to in a minute, but this is the introduction to the whole policy thing?---Right, okay.

Okay. So that's (2)(a), making policies, and we agree, don't we, that the legislation required Queensland Racing and later Racing Queensland to make policies for the management of its codes?---Yes.

45

Okay, and then in subsection (3), “The control body’s policies ensure there is guidance for persons involved in the code of racing and transparent decision-making relating to matters dealt with by the policies.” Okay?---Yes.

5 Now, do you see the sense in what that requires in subsection (3)?---Yes.

And did you at the time that you were chairman appreciate that that was the meaning of a policy, such that it would ensure there was guidance?---I’d have to say, generally, yes.

10

Okay, and that there was guidance so going forward there would be transparent decision-making? We’ve talked about that, I think?---Yes.

15

But the transparency and the decision-making, you see, must surely be associated with the fact that the control body is managing other people’s interests, stakeholders’ interests?---Yes.

You know what I mean?---Yes, I do.

20

So it’s a responsibility different from owning your own business or something like that. You know what I mean?---Yes.

25

So do you agree that the requirement for transparent decision-making is so that in the future, going forward, people can look back and see that these were the drivers that influenced the decision-maker within the control body to decide upon x or y decision?---Yes.

30

Okay, and then please, if you don’t mind, going over to section 80, of section (1)(b) – in particular (b), “A control body may make a policy for its code of racing because – (b) the control body believes it is good management to have the policy.” You see that? So I take it that subject to where it was mandatory to have a policy it was certainly the case that if there was a policy it was thought by the control body to be good for management to have it?---That’s correct: we had those policies.

35

Okay, but my point being that once it’s there it’s there because the decision’s made that it’s either mandatory to have it under section 80(1), or, otherwise, it’s good for management?---Yeah. Look, the management policies were available to change from time to time.

40

It’s not management policies. It is good management to have the policies?---Yes.

There’s no definition between management policies?---Yes.

45

Okay. So my point, you see, is if I go and look at the records of Racing Queensland, for example, and I see a policy, I’m likely to infer that the reason that’s there is because the board of Racing Queensland or the executives of Racing Queensland, or probably both, believe it was good management to have such a policy?---Yes.

And then if you don't mind going over – you were asking before about are these the mandatory policies or to that effect – section- - -?---No, were you referring to those.

5 Yeah, you did ask me that?---When earlier – yes, you were referring.

You see section 81 is the one you may have been referring to, where it says- - -?---I was.

10 - - - “A control body must have a policy,”?---Yes.

And then it defines a whole lot: you see that?---Yes.

15 Okay, and then I was going to take you over to section 84, please. Section 84, availability of policies, subsection (1), “The control body must ensure that its policies are publicly available.” Clearly, you know if that's for the transparency- - -?---Yes.

20 - - - to give people indicators in the industry how they should operate. You agree with me?---I agree with that.

Okay, and then 84(2)(a), “Without limiting (1), for each of its policies, the control body must give a copy of the policy to the chief executive within 14 days after it makes the policy,” and that would mean it goes to the Office of Racing, of course. Would you agree with that? It should go to the Office of Racing?---Yes. For
25 [indistinct], chief executive is the Office of Racing, correct?

Yes. So that's the structure for a control body, and that was the structure for Queensland Racing, as it was for Racing Queensland, and so one can proceed now, if
30 you don't mind, to discuss what policy those two bodies had in place for what might be styled procurement or purchasing during the relevant period, and so I – that brings me to take you to the document 330, please. Now, you'll see on the first page of this document - - -

35 COMMISSIONER WHITE: Mr Bell?

MR BELL: Yes.

40 COMMISSIONER WHITE: We just need to get the folder for Mr Bentley. He has [indistinct] you've got it? Thank you. Sorry. Sorry, Mr Bell, I thought Mr Bentley just had the Racing Act volume.

MR BELL: No, I think he's got it.

45 WITNESS: Thank you. No, I've got the folder, thank you.

MR BELL: Thank you, Mr Bentley. So you see here – by reference to the document that it's styled purchasing policy for Queensland Racing, looking at the top?---Yes.

5 And we see the dates there – the revision history is about when changes were made and it was necessary to record on the policy like that, where they were changed. And I wanted to start at the beginning because the relevant period for this commission is starting 1st January 2007. And this policy immediately preceded that period but what we're going to see – because I'm going to show you how it changed during the
10 relevant period. This policy that existed at the commencement of the relevant period was the foundation for the policy that the board approved over time. And that's why I want to talk about this one?---Yes.

15 So there it is and this policy is - that I'm about to take you to – is called version 1.02, as you see on the first page, current at November 2006. See that? Okay. If you turn over the page, please. You see on the left there it's got key principles?---Yes.

20 Okay. Now, those key principles remain throughout – all the way through your term as chairman in all the policies. And I'll just ask you to look at them first, please and then I'll ask you something about them?---I read those six points.

25 Okay. So the direction of the policy which would apply to Queensland Racing for business after November 2006, so long as this remained current was that the key principles for it were: number (1) value for money. So that means that the direction in purchasing for those within the control body and without, but in the code would be looking to achieve value for money?---Yes.

30 You see that?---Yep.

And that's the number one driver. And of course, (4) – oh, (3) open and fair competition of course. (4) accountability of outcomes and so on – quality of product. Now, the point about that is that when one seeks to achieve value for money, how do you go about it in business – with – before we go on, Mr Bentley?
35 Normally?---Well, normally you'd go and get a quote.

Okay. But if you got one from the brother, you wouldn't know whether it was good value or not, would you?---I agree.

40 Okay. So you might get two or four or something like that?---Yes, yeah.

Is that the way it is?---That's the way it is.

45 Well, in fact you're spot on because let's have a look. Next page: policy, “these principles have been applied in developing policy for the following key purchasing activities: Capital works projects, consulting services.” Now, because the commission's been directed towards the work done by Contour – those two – this

policy applies to it, you would think. Because they were consulting, weren't they?---Yes.

5 Okay. And also it would apply to, if it was current, the infrastructure plan, work, as well?---Yes.

Because they were capital works. And then if you go down under the sub-heading, capital works projects, you'll see the second paragraph, "The policy of Queensland Racing Limited in relation to implementation of approved projects is briefly
10 addressed below" and then you see in the first dot point, "Once projects- -?---Could I – could I interrupt and ask you a question?

Yes of course. Yeah?---This doesn't apply – doesn't this apply to race clubs? Does this apply to the control body?

15 Yes?---Okay.

I'll show you how it develops?---Yeah, I just asked that question.

20 Yeah, no that's fine. And in the first dot point as you point out, once projects are given preliminary approval through the annual capital budgeting process, race clubs will be required, blah, blah. So it's out there, public so that the clubs know what they've got to do. And then in the last two lines, "variations of greater than 10 per cent from the preliminary estimate are to be referred back to the board of Queensland
25 Racing Limited?---Its up to clubs to refer it back.

Yep?---Yes.

30 So do you recall any occasion when such an event occurred during the term you were there?---Sorry, I can't.

Okay. And then in the third dot point, "after final approval has been given, Race clubs will be instructed that they can establish formal contractual arrangements for the construction works?---Could I just backtrack for one moment?
35

Yes, of course?---In 2011, I think we brought Mark Snowdon on to review the capital development of the Brisbane Race Club.

40 Yes, you did?---I think he was specifically – that he was brought on for that purpose and then – then it escalated down – continued on.

Yes. We're going to go- -?---Does that – does that refer to that?

45 No. Because this is 2006 in November. I'm starting at the beginning?---Oh, okay. Righto. I'm sorry. Sorry.

That's okay. But what did happen when Snowdon came things changed and that's very important and I'll show you where we're going with that?---Okay.

5 So this is the policy – and then if I ask you to turn over the page, please. You see the heading, consulting services, “Queensland Racing Limited uses consulting services in a number of aspects of its operation.” See that?---Yes.

10 And then – the next paragraph, “These consultants vary from short-term, one-off contracts to longer term arrangements?---Yes.

15 Now then, the definition seems to be first to deal with; for short-term, one-off contracts. “The following policy guidelines are to apply.” And if you please read there –you – don't worry about the second dot point because that's for contracts under \$10,000 and we don't have the time or interest to go to those contracts. But what's interesting about that part is it refers to this – this preferred supplier arrangement. See that? Preferred supplier arrangement?---I see preferred contractors, yes.

20 No, sorry. Under the dot point that I told you to disregard because it's under \$10,000?---Yeah.

It says, “for contracts under \$10,000 in value, preferred supplier arrangements can be used.”?---Yes.

25 And I wanted to point that out because it comes up again in the – in the policy. And then it says in that same paragraph, “That is, where a purchasing officer is satisfied that a consultant that has provided a high quality service in the past has the necessary expertise to undertake the work and is available in an appropriate timeframe. That consultant can be appointed without a formal, competitive process being
30 undertaken.” So that's pretty clear?---It's very - - -

Small contract- - ?---Very commercial. It's commercial.

35 Commercial for buying things under \$10,000?---Yeah.

See what I mean?---Yeah.

40 And then, next dot point, “For contracts between \$10,000 and \$100,000, tenders should be called from at least three preferred contractors.” So my point is that's clear enough but, “from preferred contractors. Tenders should be called from at least three preferred contractors.” So I'm thinking that must mean not only must there be three tenders but they must be from people who've proved themselves in the past. Do you agree with that construction?---I agree with that.

45 Okay. And then the next dot point, “For contracts over \$100,000, a public tender process is required including appropriate advertising of the consultancy.” Well, that's pretty clear to you, Mr Bentley, what that means?---Yes.

5 And then – that’s for the short term one-offs. Now, you see now for the longer term consultancy arrangements, eg the ongoing purchase of external legal services that cannot be delivered in-house which may involve the use of a preferred supplier or suppliers for a range of individual tasks over an extended period, the following guidelines, dot point (1), “The purchasing officer may select a consultant for a range of tasks from a panel of preferred suppliers for the type of work involved.” So that must surely mean, before you can go there you need to have a panel?---Yes.

10 And the panel must be of preferred suppliers and I look – the best I can do, looking up at under 10,000 again, what a preferred supplier arrangement is: it’s somebody who’s done the job in the past with a high level?---Yep.

So what you do is pick from that panel. You see what I mean?---Yes.

15 But that panel must be a panel made up of people who have done the job in the past in other work, one would think. And then the second dot point: “Prior to such a selection” – and I suppose “such a selection”, you at Queensland Racing must have meant selection from a panel. So: “Prior to such a selection, a competitive process adhering to the six key purchasing principles of Queensland Racing to appoint the panel of preferred suppliers must have been undertaken, be appropriately documented and be signed off by a delegated officer.” Okay?---Yep.

20 And then the next dot point: “In selecting the preferred supplier from the panel, the purchasing officer must clearly document the reasons for the selection and be accountable for the selection. The selection must be approved by a delegated officer.” Okay. So there’s the transparency, wouldn’t you say?---Yes.

25 Okay. The next one – dot point: “Individual consultancy contracts over 100,000 in value are not to be entered into under these preferred supplier arrangements. For such consultancies, an open tender process as described above must be followed.” So all that complicated stuff – if it’s over 100, I think it’s saying you’ve got to go to tender. Do you reckon?---Yeah. This is a – this is a management guidance policy. Yes. It does say that.

35 The point about this - - -?---But – but – but some practicality must come into this as well.

Well, exactly. That’s what I want to understand - - -?---I mean - - -

40 - - - from the chairman, you see?---Yeah.

45 Because you’re going to – in a minute I’ll show you in the minutes where you approve this. So all the little people in the industry can make clear what they’ve got to do, including Tuttle and the lovely people who are dealing, trying to get contracts with Contour, they know what they’ve got to do. That’s what it’s about, isn’t it?---Yes.

Okay?---Well, this is the – the guidelines that I mean they should be working under. That’s your saying?

5 This is the policy - - -?---Yes.

- - - under the legislation that you bring down it, because the board thinks it’s a good management process, you see? Okay. So there we go, and then if I ask you to go right over a few pages to page 8 of 11, you’ll see at the foot of the page “Documentation and the Role of the Finance Department.” See that on page 8 of 10 11?---Right.

Okay?---Last paragraph?

15 It’s the last paragraph on the page of – which is numbered 8 of 11, and then the part I’m interested in is on page 9 under that heading. The second paragraph on page 9 reads, “With regard to documentation, all acquisitions need to be supported by evidence that appropriate purchasing principles and guidelines have been followed. In this regard” – and I go to the second dot point – “the delegated officer must be 20 satisfied that Queensland Racing’s purchasing policy has been adhered to and that appropriate documentation that supports the six key principles has been gathered and is available for audit scrutiny if required. The managers of organisational areas have responsibility for ensuring supporting documentation is maintained and is accessible. So that’s the policy, you see - - -?---Yes. That’s the policy.

25 - - - that was current at the time that I talked about, November 2006, and I’ll take you on from here into the relevant period. Do you consider that it’s straightforward enough to give to the staff of Queensland Racing in November 2006?---It’s – it’s fairly draconian, but it’s – but it’s self-explanatory. There’s nothing difficult about 30 reading it.

Okay. What’s “draconian” mean in this context?---I think – I think from a practicality point you couldn’t always work on – it’s sort of fairly – fairly strong, fairly cumbersome.

35 Yep. So it’s nearly - - -?---Draconian’s probably the wrong word. I’m sorry. But it’s - - -

No. I understand what you - - -?--- - - - fairly – cumbersome would be – be a better word. To – to operate in a - - -

40 Cumbersome. Yeah?--- - - - commercial word – word it would be very difficult to, I think, completely comply with this on every contract.

45 It’s really like a government policy or something, isn’t it?---Yeah. I think it’s probably been picked up off a government policy somewhere. Yes.

Okay. Now - - -?---I – I can’t – I don’t know for sure, but that’s - - -

No. I understand?---It looks like a government policy.

I understand, but the body you were chairman of was imposing this policy on all the lovely people, you see, as good management. Good management?---But weren't we
5 – weren't – weren't we imposing it on our ourselves?

And on yourself. That's right. But when I said "lovely people", I meant the people who worked in Queensland Racing?---Yeah.

10 Yeah. So even though cumbersome, this was good management in your judgment. Obviously I can accept – I can - - -?---Yeah.

- - - assume that, can't I?---You can assume that. Yes.

15 So why were you imposing cumbersome purchasing policy on them?---Well, as I say, the – the policy – I mean you can't – you can't argue against it if – on a transparency basis and every other basis, but commercially – very hard to operate under.

20 Yeah?---I mean that – that's the best I can say for 2006, which is what, seven years ago?

Okay. But it didn't change - - -?---What I was thinking at that – what I was thinking at that time I can't tell you.

25 Okay. It didn't change much. That's why I wasted all this time in November – you watch – I'll take you to all the changes?---No. But there's – but hasn't been there request for review or hasn't – hasn't the chief - - -

30 I'm going to take you to every single one, I promise - - -?---Okay.

- - - until you finished as chairman?---Right.

35 And you'll see that all this gumph that we've been through – that I agree with you is cumbersome – remains?---Okay.

So there we go. We have that policy and that's the one that is for good management. Would you turn over now, please, to 331, and on the first page of it you'll see that this now is going to be revision 1.03. See on the front there? Now, I wanted to show
40 you, just so you know that I'm trying to look at the policies as they changed – as approved by the board, would you go the next document. And I'll come back to the policy. It's 331A, which is the next document, and you see there this is the minutes of Queensland Racing board meeting of 13 April '07. And you're the chairman there. You see that?---Yes.

45 And then if you turn over to the page numbered 4 at the top right-hand corner you'll see purchasing policy and then you see it's dealt with: "Mr Carter stated that, as

requested by the board, the purchasing policy required review. The recommended changes are” – and he – and its – his recommendations are set out. See that?---Yes.

5 Okay. Now, really interestingly – you don’t need to go to them, but you can come back and tell me about them when you’re ready – I wanted to show you the policy and show you the changes in it. Could we go back to that now? You see that it was approved that there’d be changes and in 331, the document at 331 styled “Purchasing Policy”, you can see that version 1.03 is dated March 2006 and then it says “QRL changes and delegations approved 13 April 2007.” See that?---Yes. Is this 1.03
10 March 2006? Are we on a different - - -

Yeah. Keep going to the right now. Go to the right?---Keep going?

15 Yep. And you’ll see QRL - - -?---Oh, right. Sorry. Yep.

Yeah. That’s okay. “QRL changes and delegations approved 13 April 2007 board meeting?---Yeah.

20 And I’ll show you the changes now. Now, if you turn over the page, you see – and we’re now into the relevant period – you’ll see on the first page “Key Principles”. They’re all there and we don’t need to go back to them - - -?---No.

25 - - - because they always remain the same. But then if you don’t mind coming over to page 4 of 15, and then at the top, the second dot point, what changed, I can tell you, comes in is for contracts over \$100,000 – do you see that part - - -?---Yes.

30 - - - where I’m at? Now, here’s the new words: “A public tender process is required subject to board approval.” That’s the change: “subject to board approval”?---Oh, that – that change is not actually written there, is it?

Yeah. No. There it is, in there. The change, I’m telling you, is the words “A public tender process is required subject to board approval.” That wasn’t there before, you see?---Yes. Okay. Second dot point.

35 Yeah. So my point is that what was introduced at the board meeting in April 2007 was to add in “subject to board approval”, meaning the board was given a discretion. Do you see the point?---Yes.

40 Okay. Now, too hard to think back to 2007 why that was, but let’s think about it together. “Subject to board approval” means for big contracts – and “big” I’m defining as over 100,000, because in this definition there’s no bigger. For big contracts, the board will approve – sorry – the board approval makes the public tender process necessary or unnecessary, I suspect?---Yes.

45 Is that what - - -?---At your – at the board’s discretion.

Now - - -?---Can I add something.

Yes, please?---At that particular stage, I mean this – this purchasing policy wouldn't have envisaged, I don't think, the – the size of the projects we were about to look at.

5 Well, this was still 2007. We'll get up to the - - -?---Yeah. Okay.

- - - good stuff in a minute, but - - -?---Okay.

- - - my point is that obviously the board did think that the policy was a bit cumbersome, and added those words for big projects: “subject to board approval”?---Yes.

10 And in 2007, if you think back, synthetic track stuff is arising, isn't it?---Yes. It was.

15 Okay. So the point is, you see, that the – this board of – this board where you were chairman seemed to think that to have the policy where you had to get quotes and tenders and stuff was necessary. But if the contracts were big, the board could release Queensland Racing from the requirement?---Yes.

20 How could that be in accordance with the key principles?---I think from a practicality point of view.

25 Yeah. I know. I totally agree. I think it's cumbersome and terrible to go through but when it's other people's money, you see, the key points are getting value for money and showing it transparently, you see?---Yeah, but - - -

You agree with that, don't you?---I – I agree – agree with those sort of things, but you've got to look at Racing Queensland not as an arm of government or a – or a department of public service.

30 No?---I mean, we were trying to be commercial, and it was – in certain circumstances, to do – go through this would be uncommercial.

35 So - - -?---And I think – I think that possibly – and I'm only trying to rack my memory from there. I mean, I think possibly that is the reason that came in, I think. Right?

40 Well, we'll go through it, and I totally accept what you're saying and the substance of it because, in fact, what that sounds like is “Look, we'll have a policy that will satisfy any government officer looking that we're trying to achieve the principle – the key principles. But, in fact, if we don't want to do it, we don't have to.” That's what it looks like?---I can't disagree with that. I mean, I don't know whether that was the intent, but I'm saying it's a commercial situation that we were going through.

45 Yes. But, you know, the amazing thing is, in a way, what the public – what the purchasing policy does, because it's out there in the public and it's on the website of - - -?---Yes.

5 - - - beautiful Queensland Racing – and all the little people who are really the shareholders in this company, in a sense, the stakeholders, are thinking “Holy smokes, they’ve got a purchasing policy. Why am I worried?” That’s what it’s telling them. But, in fact, if you look closely, they don’t have to do anything if you don’t want to, in line with the purchasing policy. Do you see what I mean?---Okay. Okay.

Well, don’t you agree?---Well, I mean, that’s the way you explain it, yes.

10 Well, you explain it for me?---I haven’t got any other – I haven’t got any other explanation.

No?---I – I agree with the explanation.

15 So it’s sort of a misrepresentation, don’t you think?---I don’t think that was intended.

20 Okay. So if there’s a contract over 100,000 and the board thinks “We don’t need this cumbersome tendering policy,” how could that ever be justifiable if you’re trying to achieve transparency, accountability of outcomes, value for money, quality of product? How could that be achieved?---I can’t – I can’t answer that.

Hey?---I can’t – cannot answer that question.

25 No. And then if I ask you to turn over the page, please, to page 7. The heading is Preferred Supplier. Now, this – I’m showing you this because I’m struggling. I’ve struggled with this. I really tried hard to understand what was going on here in the board’s mind when it approved this change, but let’s have a look at it. “Preferred Suppliers. As much as possible, Queensland Racing should consolidate its suppliers and utilise preferred suppliers for either off-the-shelf goods services where there are several sources of supply and the purchase is low-risk or where there is an established relationship with a proven record of success. The advantages of using preferred suppliers are that it streamlines and simplifies purchasing, reducing administrative costs, and promotes cost saving through volume discounts and exclusivity arrangements. Other benefits are that it minimises cost and risk to suppliers,” blah blah. Now, that sounds like somebody was trying to get away from the cumbersome nature of the policy, would you think?---Yeah. Reading those words, I mean, that’s very commercial to me.

40 Okay. And then “1.1. Indicative Supplier Listing. An indicative listing of preferred suppliers has been identified and is available from finance, accounts payable, through discussions with management. The list should be considered as the first cut as further work will be required to refine this list to ensure that regular purchases are defined by a supplier.” Okay. So one would think that if somebody out in the public who’s a stakeholder wants to check out who Queensland Racing is using, they can go and find a preferred list. See what I mean?---Yeah. It should have been – yeah. The finance – finance department should have held the list.

Okay. There was never one, not once, not during the whole period?---I wasn't aware of that.

5 No. Okay. Did you ever check?---No.

Mr Chairman?---No. I mean, I – I don't think we ever checked – the board needs to check down that – that far down.

10 No. I'm not saying go down and walk down the street?---No, no.

But did you ask Mr Tuttle, "Hey, Mr Tuttle, have we got a preferred list"?---I – I doubt very much whether I would have. I would expect it to be done.

15 "1.2. Selection of Preferred Suppliers. The selection of preferred suppliers shall be based on selection criteria that would include" – and then the last dot point is "the six key principles: value for money" – diddle diddle. So it seems like, I'm thinking, that if there is a – if there was, hypothetically, a list, somebody has gone through a process to refine it to a list, don't you reckon? That's the thinking?---Well, that – I think that's certainly the intent of what's written here and what they were putting up to the board, yeah.

20 And the other thing I found difficult – I'm asking for your help, please – is if you look at Preferred Suppliers and then you look back at page 4, the dot point we looked at for the big contracts, if I can call it that, the contracts over 100,000, a public tender process is required, including appropriate advertising of the consultancy. We've talked about the board approving it not happening. "Tenders are to be evaluated in accordance with the six key purchasing principles by a panel of no less than two accountable officers and be approved by the delegated officer." So I'm thinking here – I wonder whether the preferred supplier model comes into this part?---I can't – I can't - - -

25 Well, if you can't, imagine how it is, looking at it later?---I can't comment on that right – right at this moment, no.

30 But the board approved it, so I'm looking for help, you see?---Yes. The board would have approved it, but we're talking about a fair – fair while ago.

35 No. I know. I'm just looking for logical discussion with you about whether or not - - ?---I don't think we've disagreed up to – up to date.

40 No. We haven't, but was there any thinking about these things, or was it just "Hey, this will satisfy the government. Let's just throw it out there into the public." Is that the way it was done?---I – I think the original document was probably – come straight from the government. But these sort of things were discussed. I do remember a – vaguely, and not sort of in any detail at all – a discussion about consolidating and preferred supplier lists. I do remember that, but that's about all.

5 Anyway, my point was talking about the logic of the documents, you see, because I was really asking you, as chairman, to help me understand whether any thinking time – whether anybody said, “Listen, Mr Tuttle or Mr Carter, before you put this forward, let’s explain how it works for big contracts over 100,000 because we’ve got the synthetic tracks coming up, and one day there might be a royal commission because this is such a weird industry, there always is one, and they’re going to look for transparency.” Where’s the transparency, you see? That’s what I’m asking you, because it looks to me like there’s just no thinking in it. Nobody actually cared?---Oh, I don’t think so. I mean, we cared a lot about these sort of things.

10 Okay. Well, I’d really love your help - - -?---I mean, we – I mean, we would expect the management, right, to put forward this. This wouldn’t have just been rubberstamped. This would have - - -

15 Totally accept it?---This would have been discussed. I mean, the preferred supplier paragraph there, I mean, makes – makes sense. It’s not something that, I mean – that you just pluck out of the sky and say oh, that’s – she’s right. Don’t worry about that. There’s no risk of that. We would have discussed - - -

20 Well, the proof is in the pudding. Let’s work - - -?---Pardon?

The proof is in the pudding. Let’s look at it. Let’s pretend I’m about to retain Contour for a contract over 100,000. Tell me, Mr Bentley. Do I have to go to public tender?---Under – I’ll have to reread it again.

25 That’s okay?---Yeah.

Just looking at the page I’ve got you on, for contracts - - -?---That’s page 7?

30 Page 4, please?---Page 4?

Yes?---Yes.

35 Okay. Now, the first question I ask you is if I was going to retain Contour to do project management service for, for example, one of the cushion track renovations, if I look at the policy and I’m, say, for example, Mr Brennan, do I have to go to public tender before I can retain them?---In strict accordance with this contract, with what you’re saying, by this policy, yes.

40 Okay. Do you recall the Contour matter ever going to the board to release the management from going to tender about this?---Contour were engaged through a tender process by a project manager, I think.

Yes. Arben?---Is that correct?

45 Arben?---Yes. Arben.

The first time?---That's right.

But that wasn't - - -?---That - - -

5 - - - performed by us, by Queensland Racing, you see?---No. Arben would have been required to forget the tender and check out – do all thing – and that's how Contour came on board.

10 But the whole point of the policy, you see, is you don't get other people to do it, because if you get other people to do it, you can't be sure of their integrity, and they're not going to keep records. This is your policy for your company, you see?---Yeah. I don't get a gist of that. What I'm saying is – what I'm trying to say to you is how Contour became involved. That's what you asked me, wasn't it?

15 I did?---And that's how they became involved.

Okay?---Did they go to tender for the next lot of work? I don't think so. I don't know, but I don't think so.

20 No, they never did. They never did. I can tell you. There's no doubt. They never did?---This was a rolling.

A rolling thing?---Yeah.

25 Yeah. So let's just go back. You see, I'm going to help you. As the first contract for a consultant to provide project management services is likely to be over \$100,000, it would – it looks like it would need to go to public tender unless the board said, don't worry about it. And one would think, because the key principles of the policy are in the board's forefront and motivated by them, there would be a
30 reason for that and it would be recorded in the minutes?---Yes.

Okay?---If – if – if we – if we specifically said don't worry about it, yes.

35 Yeah, absolutely. But then I go over to page 7 to the amendments just made which must have been in the mind of somebody in 2007 in April, which is about synthetic track time – I'm seeing somebody insert, preferred suppliers, so I'm thinking, maybe I could go and look at the list kept by finance and see who I could give it to. An indicative supplier – I'm sorry, a preferred supplier which would be on the list. See that?---Yes.

40

But I can tell you that there has – there'd never been a list?---Yes.

Okay?---We've established that, haven't we?

45 Well I – okay, so I gather a dead end there and I'd come back to the tender process?---Who – who's going there? Are you talking about the board should go there or the – I don't think the board should get down to this level.

No?---After they'd approved the policy.

5 No. I'm wondering what the board was thinking when it approved this. That's my point?---I just think that's good management. I don't think there's any – any specific reason for doing for a particular person or company. I mean that – that's a good management to change this policy. I – sitting here today I say that there. What my thoughts were at the time – too far away.

10 Don't worry. Look, I know, you can't remember?---But, I mean, I certainly – I've never, ever entertained the thought that something like this was done specifically for one person or one company or for one matter.

15 Anyway, my questions you see are directed towards – it doesn't seem to make sense. I mean that - that normally means people haven't thought about it?---Oh, that – but that clause makes sense.

Which one?---Preferred suppliers clause.

20 Okay. When does it kick in for contracts over \$100,000? Please help me?---I don't know. Don't know.

25 Because that's because it doesn't make sense, you see? Is that because it is- - -?---What doesn't make sense? I – I don't know the time when it's kicked in. I mean, we put it in the – I mean, that was approved by the board. I mean, is there some date that – that's important here?

I don't know what you're talking about but I'm showing- - -?---Well, you're asking me- - -

30 I am asking you?---Right.

Okay?---Why we put it in?

35 Yes, I am?---I say it – it's good business and what I'm saying to you is I don't think it was put in there – I'm sure it wasn't put in there for any specific purpose by any – any person. I mean, this could've come from the finance department – come – probably gone through the CEO and then come to the board.

40 Okay. Anyway- - -?---And the board would've looked at it and said, yeah that's not bad. That's good commercial policy.

45 Okay. I'm trying to talk about the meaning of it, you see. Because when I look back at the categories, I see under consulting services – the one-off contracts over \$100,000 and then if I go to the longer term consultancy arrangements – are you with me on page 4?---I was going to make another comment there but I just – it's gone out of my mind now. Page 4?

Page 4, please.

COMMISSIONER WHITE: About the middle of the page, Mr Bentley?---I'm sorry, I'm thinking of something else, your Honour.

5

Well, it's complex, certainly. If you try the middle of the page it's underlined – for longer term consultancy arrangements?---Yes. Okay. Thank you.

MR BELL: And this means, eg, the ongoing purchase of external legal services as an example. That cannot be delivered in-house. So it might mean the ongoing purchase of project management services, for example, couldn't it? “which may involve the use of preferred supplier or suppliers for a range of individual tasks over an extended period of time. The following guidelines are to be followed: the purchasing officer may select a consultant for a range of tasks from a panel of preferred suppliers of the type of work involved.” So I'm assuming that, that would – they would go to the list first?---Yes. But there is no – but there is no list.

15

No. But that's okay. Let's assume – just look at the logic of it. And then the second dot point, “Prior to such a selection, a competitive process adhering to the six key purchasing principles of Queensland Racing to appoint the panel of preferred suppliers must have been undertaken, be appropriately documented and be signed off by delegated officer. Okay, and then next dot point, “In selecting the preferred- -?---Just to help me.

20

Yes?---Are we – we referring now to the cushion track at Caloundra?

25

Well, I'm just looking at the policy, you see, at the moment and then I'll take?---Yeah, but has it – it helps me to say – is that – is that in reference to that? Because if that's the reference to that I think we did follow the policy.

30

No. This is generally, you see. This is packaged on the website?---Okay. Yes.

To tell everybody, when in the future a contract comes up that we need to perform, this is what we've got to follow. So I was up to the third dot point, “In selecting the preferred supplier from the panel, the purchasing officer must clearly document the reasons for the selection and be accountable for that selection.” The selection must be approved. And then – this is hard for me – the next one, “Individual consultancy contracts over \$100,000 in value are not to be entered into under these preferred supplier arrangements” So it would seem that the preferred supplier thing doesn't work for longer term contracts if they're over \$100,000. You see?---Well, that – that's - isn't that a flow over from the old, original policy of 2006 – at that particular dot point?

35

40

Yeah. I think it is but I'm just a little confused now between the two – are you confused about where the preferred supplier comes in and how it works?---I've been confused on a lot of things but this is – these policies are evolving. They're continually being looked at. They're – and I think that not only – if you look –

45

looking specifically at this policy, there's probably not as many revisions about. But I thought that the purchasing policy was looked at on numerous times. I think it's been the board – was borne to the board a couple of times.

5 We're going to – I promise we'll go to everyone?---Okay.

Okay. And not only that, I'm going to take you to the audit committee dealing with it too. I know you weren't on it but I'm going to show you what did happen?---Okay.

10

So let's go to the next divider, 332. This is a minute of the audit committee 26 June 2009?---That's the one with Mr Lambert as chairman?

15 Lambert – that's correct. Lambert was chairman and Tony Hanmer?---And Adam Carter.

Adam Carter and- -?---I'm right – okay, thank you.

20 Mr Mathoffer. See that?---Yes.

Okay. And apologies from Mr Tuttle and I think – anyway it doesn't matter about Mr Waite. If you go over the page to page 3 in the top right hand corner, you'll see a heading number (7) internal audit update – purchasing. See that?---No, I – 6?

25 7?---7, yes.

30 Internal audit update – purchasing. “Mr Carter advised that iPOS is a significant change in the purchasing process and is a work in progress. The committee discussed the importance of the panel preferred supplier selection to require (1) Queensland Racing to be proactive in sourcing preferred supplier lists and (2) based on competitiveness.” Now, sensible?---Sensible.

35 Okay. Now, that's what they resolved and if I take you over to the next document, 333, please. This is the Deloitte – you recall were the internal auditors?---Yes, they were. The – check the policies, yes.

And then you'll see that they do all the reporting – June 09, looking at the front page?---Yes.

40 Okay. And then if you don't mind going over to page 10 in the bottom right hand corner. Now, under the heading, 2.2, use of panel preferred suppliers. Are you with me?---Yes.

45 Okay. And in the second paragraph under 2.2.1 findings/observations, “Queensland Racing's purchasing policy makes reference to a preferred supplier listing spreadsheet, however we noted the spreadsheet did not- -?---Excuse me. Excuse me.

Yes?---Sorry. Where is that where you're reading?

That's the – let's start again. You see the heading, 2.2 use of panel/preferred suppliers, on this page.

5

COMMISSIONER WHITE: Just the heading?---Oh, the heading. Okay, yes, sorry.

MR BELL: And then underneath it it's got (important)?---Yes. Got it.

10 Okay. And then the first sub-heading is 2.2.1 findings/observations. Are you with me?---Yeah, I'm with you now.

Now, the second paragraph says, "Queensland Racing's purchasing policy makes reference to a preferred supplier listing spreadsheet however we noted the
15 spreadsheet did not provide a preferred listing of suppliers. Instead the spreadsheet listed all suppliers QRL has made purchases from in the current financial year. The spreadsheet also listed all contractual arrangements QRL have entered into with third parties." Okay. That's a bit odd, isn't it, that they would see that?---Yes. I saw that.

20 And then "2.2.2 Implications – Business Impact: With no established panel preferred suppliers listing available, QRL employees may procure goods and services from non-preferred suppliers." And then the next paragraph: "In addition, compliance with QRL purchasing policy's preferred supplier arrangements is difficult to determine. With no organisation-wide knowledge of preferred suppliers,
25 common purchasing opportunities may not be identified and exploited. Establishing a panel preferred suppliers listing would provide QRL with a baseline to assist in QRLs plans to roll out centralised common purchasing arrangements for all Queensland Racing clubs." Okay?---Just – could you just stop for one moment.

30 Yes, sure?---Okay. Right.

And then "2.2.3 Recommendation: We recommend that QRL establish a panel preferred suppliers listing." Okay. So you see, what happened there was the internal auditor made that finding, that is, they made that observation. And then if you turn
35 over to page 14, please - - -?---This went to the audit committee; did it go to the board?

Yes. What went to the board – I'll show you what went to the board in a second. Now, page 14, bottom right-hand corner, please: "2.4.2 Implications – Business
40 Impact". You see where I'm at?---That's the page that starts compliance and purchasing policy [indistinct].

Yes, please?---Is that right?

45 Yes?---All right.

Two point - - -?---Implications.

“2.4.2 Implication: Non-compliance with QRLs purchasing policy with regard to the above provision may have financial implications if QRL did not procure from the supplier that provides the best value for money in purchasing terms.” Well, that’s obvious, isn’t it?---Yeah.

5

So then that comes to the internal auditor, and what we’ve determined in trying to work out whether there was any response to that audit observation, that is, that there were no supplier listings - - -?---The trail is this – this went to the audit committee?

10 That’s right?---Right.

Went to the audit committee and they said, “Hey, this isn’t working because there’s no preferred list,” didn’t they?---Yes.

15 Okay. Now, what we’ve got – if you look at the next divider, which is 354, please, and this is a statement in – given to the commission by Mr Mathoffer. He was a senior business analyst, wasn’t he?---Yes.

20 Okay. If you turn over the page to paragraph 4, he deals with – “As to the concept of preferred suppliers, I can see that the wording of the purchasing policy contemplates a supplier being preferred as a result of a competitive process. But I cannot recall if I understood that at the time of commencing consideration of purchasing for the purpose of drafting the addendum” – which we’ll come to. “I had no role at any stage in determining whether any suppliers should be treated as preferred. I understand now that there was never a current preferred supplier list of the kind contemplated in .1.2 of page 8 of the purchasing policy.” So that’s what we’re told so far. So that’s a bit odd, and then if I take you over to three five - - -?---He’s – he’s stating the facts that you’ve just been through, isn’t he?

30 Yeah. He’s stating that nobody ever - - -?---Yeah. He’s – he’s confirming your observations from this.

35 Yeah. Yeah. And then 354A, the next document, please. I only show you this to show you that we’re working on what we’re getting, and you see this is a letter from Clayton Utz. And you know they’re acting for the present board, who’ve got all the documents from the past. Okay. And then if you turn over to page 2 of it: “Our client has advised that there was no identifiable approved preferred supplier listing during the period 2002 to 2012. Therefore we are unable to produce” - - -?---This - - -

40

Right at the end?---Which - - -

“List of Preferred Suppliers”?---Oh, okay.

45 Okay. Just read what they say about it there. Okay. And then over the next page, you see another letter from them, 7 August, where the commission’s pursuing it:

“We confirm that our client did not maintain a formal list of preferred suppliers.”
See that?---Yes.

5 Okay. So even though the auditor pointed it out, nothing happened. So that’s how it
worked in Queensland Racing, one would think: all this gumph in the purchasing
policy, but nobody acting on it to have a list. Therefore, we take it that so far as
people operating in Queensland Racing and later Racing Queensland – which stayed
the same, I’ll show you – is that there was no need to worry about preferred
10 suppliers. There weren’t any, so we just go back to the other part of the
policy?---And strictly speaking and – and the way it’s being put – yes.

Okay. I don’t - - -?---But – but in people’s minds I mean it was a little bit different
from that.

15 Okay. I don’t understand that - - -?---And certainly in my mind too.

Okay. I don’t understand those caveats – you used caveats yesterday; that’s why
I’m using it back. I don’t understand those caveats, the way you put – the way it’s
put. Am I doing something inaccurately?---No, no. What I’m saying is that you’ve
20 been through this extremely thoroughly.

I have. Yeah?---I don’t think that any board would’ve gone through this as
thoroughly as you have.

25 No. No?---I accept – I accept that fact.

Okay?---But I – I can say in my mind at the time, and if we’re referring to Contour,
that I always considered they were a preferred supplier.

30 Okay. Well, let me talk a little about not legalistic checking things out in inquiries
and talking about business – businessmen on the board of Queensland Racing for a
period in excess of four years. Okay. During that four years a policy, a purchasing
policy, was considered by the board a number of times. And when it was considered
by the board, somebody must have put a little bit of effort in to see whether it worked
35 and asked a question of the executive: “Have we got a preferred list here? Is
Contour on it?” – for example. Don’t you think those questions are normally apt for
a chairman who’s doing – I know – very hard work, like, four and five days a week
at the place? Doesn’t anybody ever ask any questions?---I didn’t ask any questions;
I assumed that they were. I would’ve thought if there – if there was a problem I
40 would’ve heard about it. I – but in my own mind – without saying anything about
the executive staff, in my own mind I considered that Contour were a preferred
supplier and I didn’t see there was any – any problem.

I know?---I admit – I admit that straight out.

45 Can I tell you why I think that was. See this purchasing policy? That was just
rubbish, a waste of paper, as far as you were concerned. That’s how you treated it all

the way through?---Oh, no. I didn't treat that – I mean that's not – that's not the board's job at this particular time. I mean the - - -

5 No?--- - - - this is a – an executive job.

I know, but the board - - -?---And I – I never delved down this deep into it.

No. But the board approved the policy all the way along?---Yeah. It went to the audit committee first.

10 Okay. Yes. And you saw what they said. I've shown it to you?---No. The audit committee first - - -

Yes?--- - - - and I – I've seen what – yes. They said it needed being fixed.

15 Yeah. There needed to be preferred list - - -?---Yes.

- - - if you're going to use that?---And I don't know what happened from there.

20 No. Now, the next thing is to test with you – you say, “I thought, in my own mind” – a little bit difficult for transparency, but I take your point – “In my own mind, I thought that Contour was a preferred supplier”?---Yes.

25 Okay. Did that notion get in your head because they went – because Queensland Racing went through some selection process for them?---No.

30 Okay. So how did it get in your head that they were?---Because they'd done such a good job on the cushion track and it was – and – and – wanted them to do other work. They were available day and night and we were working very, very hard on it and it just kept rolling through.

Yeah. So my question is - - -?---And I never – I'm sorry.

35 Yeah. Go on – you go. My question is, you see – you were using “preferred supplier”. I thought they were a preferred supplier meaning within the terms of that language in the purchasing policy. That's what you're saying?---Obviously in the language of the policy, I agree with you that they're not.

40 Yeah. So my point back to you, you see, is I understand what you're thinking. This was a nightmare. Trying to comply with the purchasing policy was a nightmare, which you didn't comply with?---We didn't comply with it.

45 No. So - - -?---But I didn't consciously not – not comply with it because it was a nightmare.

No. But you didn't worry about it at all. So that means you don't go to it and see, “What's required here? I better have a look at” - - -?---No. I didn't go to it. No.

- 5 No. Okay. So my point is not so much that – I understand your point – that in fact, there was no operational purchasing policy within Queensland Racing. I understand that, but my question is why keep publishing it to the rest of us out here, the stakeholders, that there was? That’s my big question?---I can’t answer that question.
- 10 Okay. Because you see, it’s very misleading. It tells the government that this lovely control body is complying with what’s required; they’ve got a purchasing policy. But in fact, they don’t. It’s – they’re just saying they do?---I don’t – I don’t know the – does the government mandate that we have to have a purchasing policy?
- 15 Yes. Well, if you give it to them, as you must - - -?---No. But - - -
- - - and you did?--- - - - the legislation doesn’t say we have to have a purchasing policy. I agree with you that - - -
- 20 Okay?--- - - - it is – it is good management practice. I agree with you - - -
Okay?--- - - - on that, but I don’t think we have to mandatory – do it, do we?
- 25 Okay. Let me ask you this, then. You remember I showed you the legislation before, that when you bring in a policy, whether it’s mandatory or not, you give it to the chief executive. Remember I showed you that?---Yes. Correct. Yes.
- 30 Okay. Now, there were audits by the office of the policies and they ticked boxes saying, “Oh, they had one for this and that” - - -?---Yes.
- - - “and they had a purchasing policy. Look, Mr Bentley’s company’s got a purchasing policy, so that’s good.” If there wasn’t one, you would have thought there’d be questions raised, wouldn’t there, obviously?---Obviously, there would - - -
- 35 Yeah?--- - - - possibly would have been. Yes.
- 40 Now – therefore my point is this was just deceptive to say you had a purchasing policy because you just threw it in the bin?---I – I disagree that, say - - -
- 45 Okay. When did it ever operate?---Put it this way: it’s certainly not intention to be – be deceptive. I mean, that – that - - -
- 40 When did it ever operate?---Beg your pardon?
- 45 When did it ever operate?---I can’t – I cannot consciously tell you when it did or when it didn’t.
- 45 Well, let me help - - -?---But I’d say there’s a – you’ve got a fair few examples of didn’t.

Well, every example is that it didn't. Let me take you right up to Contour, all the way through. You've even said it in the statement. Arben did something at the start and selected them, and from then on in, Contour were kept on, weren't they, for many years?---Yes, they were.

5

They did a lot of work, didn't they?---They did.

There was never any process undertaken by Queensland Racing or Racing Queensland later about them, was there?---That's correct.

10

So what I want to do now, please, is take you over to RQL's policy, meaning Racing Queensland. And if you don't mind turning the page to 334. At page 334 – I'm sorry. A document behind divider 334 – you'll see "purchasing policy", and on the front you'll see "1.04. Date: 1st July '10. RQL board changes. Final." See that?

15

So this is the purchasing policy that I can tell you was represented to the government as the one to be adopted by RQL going forward?---Yes.

Okay. Now, let's have a look at it. Would you mind having a look at it, I should say. And you'll see in it, on page 1, meaning at the bottom of – I'll start again. The first page is the front sheet. Turn over the page. It says "Page 2 of 19." And you see the same old silly key principles there?---Yes.

20

Okay. And then the policy underneath it? Same capital works and so on. And then you see on page 3 of 19, under Capital Works Projects, all the same stuff?---Yes.

25

And then consulting services – the one we've dealt with a bit because we're talking about Contour sometimes. The same – "for short-term one-off contracts". See that part? And then over the page. "For longer-term consultancy arrangements". And the reference to the panel of preferred suppliers. And then in dot point 4, "Individual consultancy contracts over 100,000 in value are not to be entered into under these preferred supplier arrangements for such consultancies will be subject to board discretion as to the waiver of an open tender, as described above, must be followed." See that?---Yes.

30

Okay. So this policy – and then if we go over just to show you the preferred suppliers are still there in page 7 of 19. Have you got me?---Yes.

35

And that all appears, but still there's no list of preferred suppliers, nor any effort to get a list, I can tell you. So that was the adoption from the first day of operation as the control body for the three codes. And then do you mind going to 335, please. And you'll see how this was updated by the board. Are you ready?---Yes.

40

You'll see there this is policy 1.06. "Date: 1st July '11. Approved by RQL board"?---Yes.

45

Okay. Now, if you look at this and take a flick through it – same old stuff. No change?---Exactly the same?

5 Same stuff. All the points that I've made, they seem to apply to it too. I can't see any differences. So even though for some – one reason or another, the lovely board is looking at these and thinking about it, presumably, they're still not addressing any of the things that I've talked about – how it makes sense. Mr Bentley, you said "Are they the same?" There's one change I should show you to be completely straight in my answer to you. If you go to page 15 of 19, you'll see on page 15 of 19 it's got "Summary of key controls"?---Yes.

10 And then what has been added is that summary. Hold on. He's telling me it's not right now. So I've misled you, Mr Bentley. Here's the right position: all the stuff I showed you before is identical?---Okay.

15 Okay. Now, over to 338, please. This is important, this one. If you don't mind looking at it, you'll see purchasing policy. You'll see, for example, at the bottom of the first page, "1.08. 4 November '11. Approved by RQL board. Changes made as per version 1.07." Have you got that?---Yes.

20 So this is starting to talk about the position in November, and in particular, if you look just on that first page again before I take you away from it, 1.07, you'll see 25 October '11 added "1. Delegation authority of \$50,000 for the project director," and "2. Industry infrastructure plan section"?---Yes.

25 Okay. "Made minor changes to the capital expenditure and repairs and maintenance jobs." So what's important here is that some account must be taken of the new add for the industry infrastructure plan section so – so much as it was added. And if you go, please, to page 6 of 21, Mr Bentley?---I have 6.

30 Okay. On page 6, at the foot of the page, you'll see a heading Industry Infrastructure Plan?---Yes.

I'll just let you have a look at that?---Yes. That was specifically put in for the infrastructure plan - - -

35 Yes. But it doesn't - - -?---- - - because we were starting to use government money.

40 Okay. Let's have a look at what it does add so that we see whether it takes away or changes anything that we've been talking about. "Policy in relation to the approval of suppliers payments specifically related to the industry infrastructure plan is as follows." Dot point 1: "All invoices must be checked and signed by the project director even if outside of the delegation limit. The project director is to obtain the approval of the CEO or board if over this delegation limit." But that's got nothing to do with procurement, has it? That's just for recording what's happened?---That's what – what was to happen.

45 What was to happen. That's right?---Yeah.

In relation to keeping records?---Yes.

Okay. And dot point 2: “All delegations are to be in line with the RQL purchasing policy.” And dot point 3: “All items outside of the approved budget with a tolerance level of greater than one per cent or \$200,000 of the project value will require board approval.” So there we go?---Yes.

5

It doesn't change anything that we've been dealing with, does it - - -?---No.

- - - about procurement? Okay. So if you don't mind going over to the next document, 339, please. And there's the board minute where this – you'll see
10 “4 November '11. Board of Racing Queensland.” You're the chairman on the first page, and then if you go to page 13, you'll see under 3.7 - - -?---Purchasing policy.

Purchasing policy. “Ms Drew sought the board's approval for the updated version of the purchasing policy due to inclusion of the industry infrastructure plan project
15 director purchasing limit of 50,000. This was approved by the board.” So at that point, that's where we are?---I certainly – I remember that, yes.

Okay. Good. And then if we go to this part, 352 – document at 352. Now, this is an addendum to the purchasing policy, and do you recall it arising for - - -?---I'd need to
20 read it.

Okay?---Is it – did it change or - - -

This is very different?---Okay.

25

This is a very different thing because, if you turn over the page of it, you'll see it's styled “Purchasing policy: infrastructure plan, Racing Queensland Limited”?---Okay. I'm aware of this now, yes.

30 So “The addendum has been prepared to” – you see where I'm reading, under Introduction?---Yes.

35 “The addendum has been prepared to expand on the RQL general purchasing policy which provides guidelines and procedures to be followed by officers of Racing Queensland Limited when undertaking and managing purchasing activities to meet the organisation's operational requirements and also to meet the objectives of the policy.” See that?---Sorry. I was – just which – don't need to read it again. Just tell me which paragraph.

40 Introduction on page - - -?---Right.

Okay. The - - -?---Any particular paragraph? So you know - - -

45 Just the first paragraph under Introduction gives you the flavour of what this thing is, and then the second paragraph, when you're ready

Second paragraph mentions \$110,000,000?---Yes.

And then the third paragraph, “Given the size and scale of these projects, this addendum to the Racing Queensland Purchasing Policy has been developed to ensure the necessary additional steps are taken to ensure all projects funded are completed in an accountable and transparent manner to the highest stands.”?---Yes.

5

Now this, you would think, brought about a change, wouldn't you?---It certainly – well, we became aware. I mean, we were using government funds, and, I mean, it was at the level of scrutiny and the level of detail was far in excess of what we needed from a normal commercial policy, yes.

10

Exactly, so this new thing was brought in, called the addendum?---Yes.

Okay, and if you look on the second – you see the same key principles at the foot of page 1?---Yes.

15

Okay, and then, next page, policy, “There is also a focus on using preferred suppliers,” – no, I'll go back to that – “As explained in this report in further detail, the procurement system should result in the following benefits: reduced operational cost, reduced risk, increased control, improved cashflow visibility.” Now all those things are great objectives, aren't they?---Sure.

20

And they're good objectives because we've got other people's money we're spending, particularly public money, haven't we?---Yes.

25

Okay, and just looking back to the key principles, just have a look at number 4, probity and accountability of outcomes?---Yes.

And that word, probity, was added: you see that?---Yes.

30

Okay. Now, then back to page we were on, which was page 3- - -?---Excuse me, Counsellor.

Yes?---This was necessary - - -

35

Yes, it was necessary?--- - - - to get the – to make sure that we complied to get the funds?

Yes. This – having this document was necessary to satisfy the government that there was a policy that would apply for this large spend?---Is that – yes.

40

Okay?---No argument.

So this would tick a box, but the real intent was that it had been complied with, wouldn't you think?---I beg your pardon?

45

This would tick a box that you had a policy that applied, but the real substance of having it was that it would be complied with?---Yes.

- 5 Okay. So going over to the – page 3 of 10, looking at the bottom right-hand corner of your policy, the addendum, you see it starts, “Racing Queensland Limited’s Infrastructure Plan Procurement Policy must adhere to the strictest guidelines of probity, accountability, and transparency, as the funds for these projects come directly from the Queensland Government, and, as such, our expenditure of these funds is expected to stand up to rigorous scrutiny.” So that’s reflecting what the government want?---Yes, and what we would – what we expected to happen.
- 10 What – one would think you’re dictating should happen?---Yep.
- Okay, and then under suppliers – you see that there, suppliers?---Yes.
- 15 Okay. 1.1 Selection of Preferred Suppliers: now, “The selection of preferred suppliers should be based on,” so that’s meaning soon, starting today, from when we approved this, there will be a selection of preferred suppliers, doesn’t it? That’s what it’s telling the government and anybody else who wants to look at it?---Yes.
- There never was one?---No. There was practical reasons for not doing it, yes.
- 20 Okay?---Because I think we’re referring to Contour, are we? There’s commercial and practical reasons for not doing it, yes.
- Okay, but it did tick the box for the government, didn’t it? You had to have this?---We had to have a policy, yes.
- 25 Because it represents to the government don’t worry, we’re all over this. We’re going to do it the way you do it in government, because it’s your money?---That’s what we were attempting to do, yes.
- 30 That’s what you were telling them you were going to do- - -?---Yep.
- - - by giving them this policy, wasn’t it?---Yes.
- 35 Okay, and then you turn over the page, please, to page 4 of 10, Preferred Supplier Listing, and then it says, “Preferred supplier listing for infrastructure planned projects are to be developed by inviting suppliers with expertise in – with experience and expertise in the key areas that make up the projects identified in the RQL Infrastructure Plan for – to tender for projects, thereby forming supplier panels.” Is that right?---All - - -
- 40 But do you see that?---I see this as that – the tendering process would have absolutely been adhered to for any works that were being carried out, but the design and engineering works were pretty well all done.
- 45 Okay?---And, I mean, there was a huge amount of intellectual property with Contour that we’ve sought to recover - - -

5 Yeah?--- - - - which we did. So, in a practical sense, we needed to – we needed Contour to continue on. Their rates were reasonable; I had that checked out on numerous occasions throughout 2011 off my own bat, and there was – this policy that we’ve put in here was intended to make sure that those – that any contracts that went to – were going to be let adhered to this policy, but that’s not – we’re not talking about Contour, we’re talking about the actual construction, but once they had worked.

10 I see?---That’s – that was the intent.

15 I see, so when the government’s money was to be forthcoming there was going to be a lot of work done by Contour with it, but they weren’t to be compliant – or at least Racing Queensland was not to comply with this for them?---Well, I think that goes without saying, because the situation – as it evolved – no, we – and I don’t – you can ask the rest of the board yourself, but my own view was – I mean, they were on board, they were doing the work, but the IP property; they had worked with us right through the year, and it wouldn’t have been practical to go out to somebody else at this stage.

20 Okay?---Certainly all those contracts below where the money was actually being spent on gravel and trucks and stuff like that; that was all going to Contour, and I think Contour – going out for quotations, and I’m sure that’s what happened.

25 You see, the difficulty I’m having with that is I understand the businessman pragmatism that you’re expressing, but what I’m having trouble with is looking at this document that goes to the government that makes them believe all the right government processes are being sort of carried out, see?

30 COMMISSIONER WHITE: Mr Bentley, what you’re saying now seems sensible about Contour. Did you or your chief executive go to the government and explain that because of the matters that you’ve raised here with Contour that it was sensible and pragmatic and probably cost-saving to stick with Contour and not go through the process?---No, your Honour. I didn’t – you’d have to ask the CEO, but - - -

35 It’s unlikely that he’d go, I imagine, without you?---It is absolutely unlikely. I mean, I think that the thought there, they’re on board, they’re doing the job; it didn’t cross my mind actually that this was going to capture Contour. I was thinking more of capturing all the contracts that were going out for tender, but the actual spending of the money: we just felt that Contour was – it was practical to keep them occupied.
40 Go out to tender: I mean, we didn’t see it necessary.

I just see- - -?---I’m sorry, but that’s - - -

45 - - - a lot of communication with the Office of Racing was your formal linking to the government, of course- - -?---Yes.

- - - about the infrastructure plan and the development of the business cases and so on?---Yeah. I'm sure that there's probably other breaches along the line. Certainly unintentional, I mean, but Contour: we never – I never ever considered it necessary to comply with that [indistinct].

5

MR BELL: Well, you're being a bit- - -?---Okay, from a practical point of view.

You're being a bit hard on- - -?---It's no good saying one thing and meaning another. I believe that the job that they were doing; I didn't think it was necessary, but that's the decision made, I don't think it would have even came up in a board meeting.

10

No, but in fact- - -?---I think that we just assumed that this was as – the best way to do it - - -

15 COMMISSIONER WHITE: And wasn't raised with you- - -?---No.

By Mr Snowdon, for example, who was managing a lot of this compliance?---I think he raised this; I have to sign a contract that had been overlooked at one stage.

20 MR BELL: You just should stop, because you're being unfair to yourself?---No, I'm - - -

No, you really are being unfair. It was better for you than what you're saying; I'll show you. Do you want me to show you? And then answer the Commissioner's question?---Yeah, I'm trying to answer the - - -

25

COMMISSIONER WHITE: Well, perhaps - - -

MR BELL: Okay, you go ahead.

30

COMMISSIONER WHITE: Perhaps you should seize these gifts from Mr Bell, Mr Bentley.

MR BELL: You go ahead if you want?---There hasn't been too many in the last five days.

35

COMMISSIONER WHITE: Exactly, so take them when they come?---Thank you.

MR BELL: So my point is I just want to show you the rest of the addendum, because you can see in a minute that there was preparation for a sole supplier extant to all this stuff, and I wanted to show you now that before you keep answering?---Okay, thank you.

40

So I was showing you the preferred supplier listing and the – I'm sorry – Prequalification of Suppliers part, you see that? And then it says Outsourcing of Supplier Panel Selection; you see where I'm at?---No.

45

I'm sorry?---I've sort of been a bit distracted.

No. Okay, that's fine?---But it's just going to take - - -

5 COMMISSIONER WHITE: Page 4 of 10, two-thirds of the way – three-quarters of the way down the page at 1.4?---Thank you.

MR BELL: Outsourcing of Supplier Panel Selection?---Yep.

10 And this says, “the use of organisations specialising in procurement processes such as preferred supplier lists pre-qualifying suppliers and other supplier related contractual arrangements may be an alternative or addition to in-house procurement process.” So what's happening, you see, is there's development of this thinking that's more practical, like you're talking about. But let me take you on . In the last
15 paragraph on that page, “the use of this type of organisation may be beneficial for tendering and contracting arrangements relating to the infrastructure plan projects.” Now, the next page is important and this is why I was trying to give you an opportunity on this first. Page 5 of 10, 1.5, applications for sole suppliers, “In some special circumstances, the normal practices as outlined above may need to be set
20 aside.” See that?---Yes.

“For these instances, an exemption from normal policy practise may be applied for. Reasons for such exemption include but not confined to” and let's just go straight to
25 (c) “a sole supplier situation exists where a high degree of technical expertise is required, for example.”?---Yes.

And (d) “a genuine urgency exists.” And then, in the next line, “unless the above stated exemption criteria is met or other compelling reason is able to be supported, the current RQL purchasing policy with addendum will apply.” So that seems to be
30 an attempt to address what you were just talking about, don't you think?---Yes.

Okay. And in particular, if you look at it and think about it, it might be that whoever drafted this was thinking about the predicament in which Racing Queensland found itself at that time with Contour?---I think that's – that's a fair – fair assumption. Not
35 necessarily with Contour. We didn't want to be in – in conflict with the government over – over this – I've got to stress on you how important that I saw this money for the industry. Without that money being taken in and spent by the industry, it would've been a severe disadvantage and we wanted to make sure that we weren't going to have any problems along the way. Treasury weren't too excited about
40 giving us the money, I can assure you.

No, that's right. That's right?---I didn't need to read some of the – the statements to understand that. I'd been at those meetings and – and they put roadblocks in
45 everywhere they could. So we didn't really want to make – we wanted to make sure that anything that we did for the infrastructure plan was right. Can't agree – can't disagree with you on some of the other comments you've made about the purchasing policy.

Okay?---But this one in particular was very important.

In a moment, I'm going to show you what – how that came about. It's really bad so don't go too far with it?---Oh, okay. Well, you - - -

5

Certainly, application for sole supplier and we've talked about what's in it, you see – we talked about how in an emergency, for example, or a genuine urgency situation or a sole supplier situation exists. See that?---Yes.

10 Okay. Now, this is where it gets, in my respectful view, and why I'm ask – why I'm saying that is so you'll help me.

What would a sole supplier situation mean, for example?---Well, a sole means one only – there's one only available, doesn't it?

15

Yeah. Yeah, that's right. Exactly. Supplier situation – so I'm happy with (a) sole supply meaning one person. But what's the situation such that it would be exempt? That's a toughie, you see, for anybody trying to read this?---Yeah.

20 Do you want me to help you?---Yes, please.

Okay. Well, you see, when this was drafted adding this into the addendum – application for sole supplier – only one thing was in the mind of the people drafting it – Contour. Contour's – the predicament for Racing Queensland for Contour because Contour was the sole supplier and there had been no process gone through. See what I mean?---Yes.

25

Okay. And in particular, where it says at the start of it, "In some special circumstances", the special circumstances were all gone or past, as you said before. There were no special circumstances that were going to come up in the future. They were gone, you see? Do you see what I'm getting at? Like you were saying- - -?---Yeah. What's – what's the date of this?

30

Have a look at the front – 19 December and the draft addendum 15 November. And I'll show you how it came about in a minute – how this document came about and who contributed to it. But my point to you is, you see, that if you have a look at application for sole supplier, it's – makes you feel relaxed about the situation with Contour because that – in fact, it was drafted for the situation for Contour which had already taken place. It wasn't at all a policy for the future but it was a way to explain to the government, if you were ever asked later, holy smokes what about Contour? And somebody could refer to this, you see?---Yeah. I – I don't think that was – that would be the intent. The intent at that particular time was to make sure that everything was in order, not because we were worried about them coming back at some later date. We were more worried about going forward.

40

45

Well, let me show you where this came from?---Okay.

We might reflect on that. So one thing for sure is that – it’s half past eleven – did you want to?

5 COMMISSIONER WHITE: What’s your timing convenience, Mr Bell?

MR BELL: Does that suit you, Mr Bentley, to stop now for a moment?---Yes, fine, yeah. Yeah.

10 Okay.

COMMISSIONER WHITE: We’ll take a 15 minutes break then, ladies and gentlemen.

15 **THE COMMISSION ADJOURNED** [11.36 am]

THE COMMISSION RESUMED [11.53 am]

20 **ROBERT GEOFFREY BENTLEY, CONTINUING** [11.53 am]

25 **CROSS-EXAMINATION BY MR BELL**

COMMISSIONER WHITE: If anyone is finding the temperature in here uncomfortable, we’ll try and see if we can do something about it. It’s considerably warmer in here than it is in the corridor outside. All right. Thanks, Mr Bell.

30 MR BELL: Mr Bentley, we were looking at the addendum which is at divider 352, please. And just before the break, you’ll recall I took you to page 5 of 10 - - -?---Yes.

35 - - - to the part Applications for Sole Supplier. You see that?---Yes.

Now, I’m going to explore in a minute the history of where that came from. Okay? With you, I mean. So would you mind turning over to the next document, 352A. And here you’ll see the board meeting of the 19th of December ’11 where you’re chairman, and then if you don’t mind going to page 12 at the top right-hand corner. Page 12, about the – point 7.5 on the page. “Appendix C. Purchasing policy addendum. Industry infrastructure plan. Mr Carter tabled the purchasing policy addendum for board approval. The board discussed the policy, and no amendments were requested. The board approved?”---Yes.

45 Okay. So that’s where it got approved. So what I wanted to do now, please, is to show you how that addendum came about, where it came from, and in particular, the

relevant background is the one you mentioned earlier where you said, well, Contour had been doing a lot of work for a long time, and they had, hadn't they?---Yes.

5 They'd started working with you on the idea of the industry infrastructure plan probably even before the 1st of July '11?---Yeah. Back – after Mark Snowdon had – had done a – a look at all the industry assets, then we started to formulate it.

10 Yes. And so if I ask you, then, to go to the document at 339, and you'll see at 339 a board meeting minute of Queensland Racing, 4 November '11. Have you got that?---Mmm.

15 And then in the top right-hand corner to page 10, please. And this is the point you were raising with me before. I should take you – before I go to 10, just to refresh your memory, go to 9 first, please?---Page 9?

Page 9, please. And then at the foot of page 9 you'll see “2.6. Industry infrastructure report.” Have you got that?---Yes.

20 “The board discussed the plan and the business cases as presented. Mr Mark Snowdon gave a further comprehensive report on the progress of the industry infrastructure plan with particular reference to the individual budgets and the preparation of business cases.” And then over the page, “Snowdon advised that the business cases for Beaudesert had been lodged with the Office of Racing” and so on. And then in the end, “The board noted the update business cases that were being
25 prepared for treasury.” Okay. Then down at the foot of that page, which is 10, page 10, you'll see “3.3. Appointment of contour.” Have you got me?---Mmm.

30 Okay. Now, I should let you read that because it is important, and it reflects a lot of that which you were saying earlier?---Do I – you want me to read the full part?

Yes. Down to the bottom of the next page, please?---Okay.

35 Okay. Now, does that help you reflect back on Contour and the Contour predicament?---Yeah. Not – not at all of it, but some of it.

40 Okay. And in particular you see, even though it's a bit odd, it says at the foot of page 11, “The board resolved that” – and go to the last dot point: “Chairman advised the government that a contract with Contour Engineering has not at this date been settled, but RQL has undertaken sufficient audit to satisfy itself that the contract rates charged are value for money”?---Yes.

45 See that? That's why it was saying be careful, because you were saying to the Commissioner you hadn't told the government, but maybe you had. See what I mean?---Yeah. I didn't – I couldn't remember.

Okay. So what I wanted to do was ask you to go to 340, please, to an email from you. Now, you're sending this to Mr Tuttle but also to members of the board: Mr Brennan, Shara Murray?---Yes. That's my email.

5 Yes. And so you're talking about the industry infrastructure committee and Contour seeking to massage each project to fit the budget?---That's correct.

Okay. And it is correct that there was no – there is no formal appointment made to carry out this work?---Yes.

10

But that was just a technicality, wasn't it, because - - -?---There would be no - - - - - they had been doing the work?---Not a technicality; an oversight.

15 Okay. That's what I mean. But they had been doing the work?---Yes.

Yes. And then if you go over the page of your email, please. And then you see – I'm particularly interested for you to read at the foot of the page, 14, "The situation currently can be recovered, but for the awarding of any future contracts, the process needs to be strictly in accordance - - -"?---Okay.

20

I'm sorry?---14. At the bottom of the page.

Yes, please?---"The situation currently can be recovered".

25

Yes. "Currently can be recovered, but for the awarding of any future contracts, the process needs to be strictly in accordance with RQL policies. Mark Snowdon has already advised last week that he has agreed with Carol Perrett that he will work with her to make sure the approval of the business plans are compliant," because the government, as you said earlier, were concerned to ensure that normal procurement processes were carried out, weren't they?---I'd say that they – they – they would make sure, when they're reviewing our work, that we were compliant. So we needed to be compliant.

30

35 Yes?---Yes.

And if you go over to the next page of your email, number 5, "Draft contract from Contour was presented to the board and was rejected outright"?---Yes.

40 And then "Where to from here? 1. Malcolm is to address the board's concerns on all aspects of the integrity of the process through the IIP committee with particular emphasis on" – dot point 1 – "a separation of functions. Project manager." That's about Contour, isn't it?---Yes.

45 "2. Quantity surveyor function to be included." And that was from Mr Ludwig?---Mr Lette.

He thought that was a good idea?---That was Mr Lette, I think.

Mr Lette. And the idea was that that would be looking for value for money?---Yes. I
– yeah. Mr Lette – Mr Lette has experience in that field.

5

Okay. And then “Copyright non-negotiable. Adherence to RQL policies.” So that
was to be an important point to be addressed going forward because of the
importance of the – and the amount of money coming from the government?---Yes.
Critical.

10

341 divider, please?---Are we going back to any of that?

No. Only if you want to say something?---No, no. No, no.

15

Okay?---I mean are you going to ask me about Mackay, because I can explain
Mackay now if you want me to.

Not really?---Okay.

20

341, please, and I’m asking you to look at the second half of the page. You see an
email from Tony Hanmer to the board and to other people – Mr Tuttle, Mr Snowdon
etcetera. Have you got that?---From Tony Hanmer – yes.

25

Yes. And you have a look in the second paragraph, about seven lines from the start
of the email?---Seven - - -

It’s titled “Delivery of Industry Infrastructure Plan.” Last three lines of the second
paragraph - - -?---I’m – I’m not with you.

30

Okay?---Oh, okay.

Okay?---I’m looking for a subheading. I wasn’t looking at the top.

35

I’ve got it. So halfway down you’ve got Tony Hanmer’s email?---Yes. I’ve got that.
Yes.

40

Okay. 6 November, 3 o’clock in the afternoon, to the board or c.c.’d to the board.
But it’s also to Tuttle, Snowdon, Brennan and Murray and it’s titled “Delivery of
Industry Infrastructure Plan,” isn’t it?---Yes.

45

Okay. And I’m looking at the – about six lines down – I should start above that: “At
the audit, finance and risk committee meeting of 10 October I tabled two items, one
of which was ensuring that all RQ suppliers comply with several fairly simple
criteria. This was borne out of a concern that the board needed comfort in the
suppliers our consulting engineers were subcontracting, as well as having confidence
that the consulting engineers we chose would be in a position to deliver on their
contractual arrangements.” You’ve got me?---Yes. I’ve got that.

And then about five lines down – I’m sorry. About two lines down: “In essence, this suggestion was that RQ needs to have reassurance on” – and a statement of governance is the third thing – “policies in place to comply with statutory guidelines”. See that?---Yes.

5

Okay. And then the last two lines on the page: “This was driven by my continual concern that we are spending taxpayers’ money and that, even with a benevolent administration, we must comply not only with our purchasing policy but with whatever policy the civil administration of the day requires.” Okay. And then he talks – he, Mr Hanmer, talks about, “Risk is the major issue all boards have to manage. The infrastructure plan is an issue of major order, and consequently our exposure is high.” I think he’s referring to the exposure of the board, isn’t he, if there isn’t compliance on a strict basis?---Yeah.

10

15

Okay. Now, you’ll see that halfway down this page, Mr Tuttle has earlier written to those people, including the board, and Mr Tuttle writes to Mark Snowdon. And in about the third paragraph: “Write to government advising what has occurred to date re the engagement of consultants to satisfy government timelines re Mackay, also advising how we have satisfied ourselves in terms of value for money and probity. Provide documents to RQL board ensuring board is aware of what has occurred.” And then if you look at the bottom of the page: “Reconfirm with all relevant consultants, including Contour, no work without engagement”?---Yes.

20

25

And then over the page, the second paragraph: “Competitive process required as per RQL purchasing standards and compliant with any/all requirements of government. Settle with RQL board probity standards, required reengagement of consultants. Ensure appropriate separation of disciplines with the engagement of consultants. Deal with tender process on a project-by-project basis.” So that’s – everybody’s starting to focus up on making sure everything’s covered for probity purposes because of the extent of the money the government’s going to – soon, we hope – give forward?---Yes.

30

35

And then would you mind going to 342 divider, please. This was a letter that you wrote to Mr Kelly of the Office of Racing on the 7th of November. You see that?---Yes.

40

Okay. “We acknowledge that as part of the delivery of the industry infrastructure plan for the racing industry, the importance of implementing a high degree of probity with the expenditure of these funds. In doing so, we have amended and incorporated the fundamentals of the Racing Queensland Limited purchasing policies as part of the commitment to providers of services to RQL.” Next paragraph, and this is what I think you were going to tell me before: “We wish, however, to advise that in the case of Mackay, due to urgency of commencing the work from a workplace health and safety aspect, it was necessary to appoint Contour.” Are you with me?---Yes.

45

Okay. And then over the page, have a look in the second paragraph. You say, “In order to satisfy value for money, RQL based the appointment on the following.” So

5 that clearly enough, you're concerned that the Office of Racing is sensitive about ensuring that value for money etcetera, the key principles, have been achieved?---Yeah. That – that – that's correct. I mean this – this infrastructure plan and – as we got closer and closer, I think that – if I remember correctly – everyone's awareness of making sure things were right - - -

Yeah. Focused up?--- - - - heightened – heightened awareness.

10 Beg your pardon? Heightened - - -?---Heightened awareness.

Yeah. Absolutely. And so you see about halfway down: “RQL confirms that sufficient probity has been incorporated with the appointment of Contour in this role to ensure appropriate value for money.” See that?---Yes.

15 And then jump one paragraph: “RQL can advise that the fundamentals of the purchasing policy are continuing to be applied to all other commitments to service providers on this project.” But that's but for Mackay, you see?---Yeah. I think that I was referring to all the – all the different contracts - - -

20 I see?--- - - - that were going – going out to tender.

25 And then if you go down to the next paragraph, the third line: “In the reason for the appointment without the preferred procurement policy was based on the same reasons provided above for the Mackay project, and RQL based the appointment on the same criteria as above. RQL can advise you that the fundamentals of the purchasing policy will be implemented on all appointments for these projects moving forward once the business cases have been approved and funding is available.” Okay. And then if you go over to the next document 343, please, you wrote to Mr Hanmer – I'm sorry. Debby Toohey writes to Mr Hanmer, Mr Milner, Bob Lette, 30 and this was sent on your behalf. Okay. And in particular – you send that letter, and then in the last paragraph: “From the attached material, it can be seen that RQL is following a correct procedure with the exception of the appointment of Contour”?---I see that.

35 Okay. Now, if you go over to the minutes in 344, you'll see the minutes of the Industry Infrastructure Plan control grouping, which included you as a guest. Have you got any recall of that meeting?---[indistinct] 10th of November. Page - - -

40 Don't worry too much - - -?---I – I certainly would - - -

Yeah. Yeah?---If I'm down as being there, I would've been there. But - - -

45 The point is – if you go down to 5, topic number 5: “Project manager role in checking of invoices.” You see the second line: “The group noted that the project manager, Contour, has multiple roles at Mackay and agreed that this was less than ideal”?---Yes. I do remember that.

Okay. And then over the page – I’m jumping one line – “This ensures that there is transparency and that reasonable levels of probity are sustained. Mr Snowdon will advise the project management consultants accordingly and will ensure that the process is followed.” Are we good?---Yes.

5

And then this is important, please, in 6: “Project manager engagement of consultants – requirement for tender.” And then if you go to the second paragraph, you see: “Mr Ron Mathofer undertook to work through the RQL purchasing policy and the state purchasing policy, paying particular attention to the points raised by Ms Perrett in her email of November 10.” So clearly enough, the role was undertaken by Mathofer to check the policy?---Yes.

10

And then if you go to the next document 348, please. Now, you see that what happens is Mathofer here sends this email to a number of people who you can see above, including executives within Racing Queensland and including Mr Carter and so on. And he says - - -?---Mr Mathofer was Adam Carter’s 2IC.

15

Yeah. And what he was saying – well, you see what he said: “As per last meeting, please find attached the draft addendum to the RQL purchasing policy for your review and feedback prior to seeking comment from the Office of Racing.” And if you have a look at what he attached, he attaches something like the addendum that we’re talking about?---Yes. That’s where it came from.

20

Yeah. That’s where it came from?---Yes.

25

But what’s important in it – if you don’t mind looking, please, as you flick through it – you see on page 3 of 9, in the bottom-right hand corner – are you with me?---I’m getting with you.

30

Okay. 3 of 9?---3 of 9.

You see under “Supplies” it has “1.1 Selection of Preferred Suppliers”?---Yes.

35

And then if you keep going over, you’ll see “1.2 Preferred Supplier Listing”, “1.3 Prequalification of Suppliers”, “1.4 Outsourcing” and then “Consulting Services”. And then at the foot of page 5 of 9, “Confidentiality and Security of Information” and then over the page, “Conflict of Interest”, but nothing about what we are talking about: the sole supplier – yet. See how there’s nothing in it about that?---Yes.

40

Okay. So then if you go over to the next document, please, which is at 349, this is from Mr Brennan, Paul Brennan. And he’s writing to Chris Fulcher and Brett Thomson who are people of Contour, aren’t they?---Yes.

45

People at Contour. And Mark Snowdon is the consultant within Queensland Racing. And the second paragraph of this email, “Following receipt of your fee proposal, I have discussed this internally but unfortunately due to the costs associated with finalising the detailed design, this will require government approval which will

dictate one of the following – one of the below approaches: RQL to proceed with Contour to undertake the detailed design without going to the market and prior to government approval of the business cases; RQL to go to the market for the detailed design prior to government approval of the business cases; RQL to await business case approval and then engage Contour to have the work undertaken; RQL to await business case approval and then go to the market to have the work undertaken.” And then underneath it, “As the release of funds is contingent upon RQL meeting all government probity requirements, it is imperative that RQL has government approval if there is to be any deviation from the agreed protocols. Bob met with government last Friday and we are awaiting a response in relation to the approach.” See that?---Yeah. And perhaps we were able to take in Cairns.

Beg your pardon?---“The approach we are to take on Cairns.”

Yes?---I think that’s a reference to a – the practical side of it of what we were going to do, I think. I don’t think that’s an issue for the purchasing policy. I think that was an issue on practicality. I think.

Well it – Okay, I’ll tell you what happened. You have a look next because this concerns driving what happens?---Okay.

350, please. So Brett Thomson – you know who he is?---Yes.

Who is he?---He’s a director of Contour.

Okay. So he’s writing to Paul Brennan, his partner Chris Fulcher. You agree with the partner, in a sense, don’t you?---Yes.

Snowdon, Tuttle, Mr Bentley which is you of course, Russell Thompson et cetera. Re Cairns procurement. “With regard to Paul’s email, we would consider the situation to fall well within the auspices of the sole supplier criteria of the state government procurement policy, especially in the context of the critical nature of the sub-project. The relationship between customer and supplier and the three foundation concept of the state procurement policy and the limited risks and relative low cost of this component – of this sub-project. Following on from our meeting regarding procurement policy, please take the time to review the attached government procurement/Cairns doc. We supply this as information for your consideration.” This part of the document describes the process for application for sole supplier that may be used to introduce the concept to the board. This information has been generally taken from the state government website. So- -?---I don’t – I don’t remember reading the email. It’s been addressed to me but I don’t remember reading it.

Okay. That’s fine but clearly enough, what’s happening is Contour’s looking like its advancing a solution to the problem for it?---Well, reading this today, right?

Yeah?---Bearing in mind this is the first time I've actually read it – it looks like they're pitching for the job.

5 Well, no, what they're doing is they're saying, well you've got a problem which was expressed in the last email because the government's so picky about procedure and procurement policies and I've got a solution. Here's a sole supplier solution. Isn't that what's happening?---Counsellor, it was more Racing Queensland were picky than the government were picky at this stage.

10 Okay. But just answer my question. My question was: doesn't it look like the question is raised as a problem here because of Contour. And Contour are coming in with a solution saying, but hold on – what about us being – what about a sole supplier situation?---Yes, that's what they're saying.

15 Okay. And he's attached a policy for consideration?---Yep.

And if you turn the page, you'll see that's exactly what it is?---Right.

20 See what he attaches?---Yes.

Sole supplier. And you see, if you go down to reasons for exemption – probably able to see that they are the ones that I showed you earlier?---Yeah.

25 Were the ones that popped up in the Racing Queensland addendum soon – not yet, but soon?---Yep.

Okay. And in particular- - -?---This – excuse me, counsellor.

30 Yes?---I mean, you're putting these questions to me.

Yeah?---But really this is part of Adam Carter's area, isn't it?

35 Yes. Yes. This is - - -?---I mean, he's the one that should've been doing this or was involved in doing it.

40 But we – in the end, you see, what's happening is, if you think about it, you're receiving an email like him that the supplier that's causing a problem because of the government's wanting to be careful about it – they're coming up with a solution?---As I say I can't recall seeing that email. I mean, I'd say I was only copied for information. I don't know – I've never seen that one before anyway.

45 Okay. But having a look at it now. You received an email from Contour saying, hey we've got a solution to the purchasing policy problem?---Yeah, but I didn't see it as a problem for me at this particular stage. I saw it as a problem for the executive staff to solve.

Well- - -?---And the fact that I've been copied into an email which I don't think I've ever read.

5 Mr Bentley, you accept that you received it by looking at that, don't you?---I – yeah, absolutely, yes. I'm not arguing with that. I'm just saying, I don't know whether I actually read it.

10 The problem, you see, was one that was firmly in the forefront of your mind about Contour, wasn't it? At that time it was?---Yeah, we hadn't had a contract with Contour, yes. I mean, we had to solve the problem.

There was no tendering for Contour?---I didn't – I don't know about the sole supplier bit. I just a little bit hazy on that one.

15 But soon- - -?---But certainly we had – we had a problem with Contour. We had to solve the problem. We didn't have the contract – wasn't signed. What else? There was something else but I can't think what it was.

20 It didn't fit with the policy – the purchasing policy that you had in place, of course?---No. I think that the- - -

25 There'd been no tendering?---No, we were going – we were looking forward. We weren't looking back. We didn't – I didn't see the issue we need to clean up going back. We certainly needed to clean up going forward. That – I – is my view.

I'm not so sure that Paul Brennan thought the same, if you go back to 349?---Yes. I – I – that's the one we read before, isn't it?

30 Yeah?---Yes.

And so isn't he, Brennan from Racing Queensland- - -?---Yes, he is.

35 - - - identifying the problem because of Contour doing work. However, without there having been any procurement process gone through for it?---Yeah. I think it was more the fact that they'd done work without – without a contract or authorisation. That's what I thought.

40 Well, okay. Have a look at it then. We better go into it. (a) "RQL to proceed with Contour to undertake the detail design without going to the market and prior to government approval of the business case."?---Yeah, right.

That's one option?---Okay.

45 (b) "RQL go to market for the detail design." Couldn't do that?---No.

(c) "RQL to await business case approval and then engage Contour." That's a joke because they were engaged a long time ago?---They were engaged, yes.

And (d) “RQL to await business case approval and then go to market.” Well, that’s gone. The horse has way bolted to that. So there’s a real issue, you see, isn’t there?---There is an issue.

5 Yeah. And so my point is, if you turn to the next one 350, Contour comes up with a solution – change your policy?---That’s exactly - - -

Put in the sole supplier idea?---Yes.

10 Okay. So let’s have a look where it goes to. So he supplies that, does Brett Thomson. And then if you don’t mind turning to 350 (a), please?---Brett Thomson?

Yes. Brett Thomson, please?---Yep.

15 And what he does is he refers to attachments and one of the attachments if you turn to it – the first one is process for application for sole supplier?---Yes.

And then, next attachment, procurement service – application for sole supplier. You see that?---Yes.

20

And then if you go to 351 – this is the classic, this one. 351 – Ron Mathofer, who’s the man in Racing Queensland, goes to the Office of Racing and says to a – “I’ve been asked to forward to you the current RQL purchasing policy documents including finance procedures.

25 The addendum was developed to further align the RQL policy with Queensland Government Procurement Policy.” And if you look at the addendum that he attaches, you’ll see on page 5 of 10 in the bottom right hand corner, sole supplier at the top?---Yes.

30 And there’s no doubt where Mathofer got that from, is there?---Well, on face value, yes, I agree with you.

So then 347, please?---Yes. I’ve read that.

35 And that was sent on your behalf? You see that. Presumably Shara has spoken with you and you’ve said, “Please send this to people.” I think that’s fair, isn’t it?---I think so, yes.

40 Okay. “And we have – we were advised by government that we have one – we only have one opportunity to make application to vary the IIP project budgets, and as consideration of this application would not occur until early next year, we will push on within budget for the time being. I advise that Mark Snowdon has worked on the compliance matters raised at the last board meeting, which are in hand, and Mark will update the board on the 19th December”?---Yes.

45

And then if we go the 19th December board meeting, 353?---353. Okay.

353 is a board minute of the 19th of December where you're chairman, you'll see on the first page?---Yes.

5 Okay. And then if you go over to page 12?---Page 12.

You'll see under appendix C "purchasing policy addendum", and that's where the board approved it?---Yes.

10 Okay. And then if you go to 353A, you'll see the board paper, which was appendix C?---Yes.

15 And have a look at what that's about. "Background and issues. The need for tight controls in the procurement of goods and - - -"?---Is that – that's the one – the originator was Adam Carter, is it? At the bottom? Is that the one we're looking at?

Yes. Looking – you look over the last page. You can see he signs off on it?---Right.

Are you ready?---Yes.

20 Do you want me to show you parts, or do you want - - -?---Yes, I'd prefer you show me parts.

25 Okay. Under "Background and issues" you see that in the second paragraph, "A comparison review was conducted in order to ensure all necessary elements of Queensland government procurement policy have been addressed in the RQL policy." And then a few lines down, "The RQL policy was sufficiently detailed to maintain strict controls over all procurement requirements of RQL. Given the expected scrutiny of all activities relating to the industry infrastructure plan, the review was undertaken to ensure RQL is able to clearly demonstrate that all project procurement requirements were executed in line with state government procurement policy. Executive summary. The addendum attached seeks to further strengthen RQL purchasing policy." And the next paragraph: "The need to - - -"?---Excuse me.

35 Yes?---It says in particular for the industry infrastructure projects.

40 Yes?---As I said to you earlier in the day, everyone was becoming aware. Right? Before that, there was probably a bit of casualness about it, or quite a bit of casualness about it, but it was sort of – I could see that this is now coming into our mind. I mean, I remember this. This is coming into our mind. We've got to get compliant with this. That's - - -

45 But you see, it's around the other way. That's the point of the whole thing I've shown you. You see, what it was doing was putting up a policy that had a change to it to allow for the Contour situation that had been there all the time?---Yeah. Seek to become compliant, yes.

So you just change your policy for the facts?---Well, we were seeking to become compliant. I mean, we weren't – we weren't compliant – we weren't strictly compliant at that stage.

5 You're right?---It's not a matter of deceit; it's a matter of getting – housekeeping – getting your house in order.

It is a matter of getting your house in order. You're quite right. So what you do is you change the rules to suit what you've done. Bingo. Perfect?---Well - - -

10

Instead of doing the procurement properly - - -?---Yeah, but this – yeah, but this – I mean, this - - -

- - - you changed the rules?---Yeah, but the purchasing policy is a management policy. And, okay, we – we – we stuffed up. So we've got – we've changed the policy to make sure that we were right as far as the government is concerned. I don't see a problem with that.

15

Okay. I'll show you the problem with it. Let me show you the problem with it. When Contour was first retained, you had a procurement policy. That involved it being essential that tendering take place. See the point?---And we didn't follow it.

20

Okay. That did not get followed. Do you understand that?---Yeah. I – I accepted that earlier.

25

Okay. So a problem arose because everybody knew, all the board knew, you knew, that there would be scrutiny as to what had happened?---No.

So what happened was nobody went back and told the government, "Hey, hold on a second. We haven't complied here with the policy at all." What they did was they changed the policy?---Oh, look, the way you put it, I mean, it looks like deceit. It's certainly not intended.

30

It does. It does?---It's certainly not intended to be deceit. It's trying to get things organised to keep going. I mean, this is a commercial operation. It's not - - -

35

It is. It is?---It's not, you know - - -

It's for the government, you see. They are the ones who are insisting upon a procurement policy, and close scrutiny of compliance, you know, will occur. So what you do is you change the policy with Contour's help?---So we become compliant in the future, that's correct, and pick up the mess that's been done before. I accept that. I – look, I'm not arguing with you with that.

40

Okay. Come - - -?---But I mean, it certainly wasn't done with deceit; it was done to comply.

45

I'm not so sure?---Well, I'm saying to you, categorically, it wasn't meant to deceive anybody. We wanted to become compliant.

5 Okay. Let me understand, then. When we had the single supplier situation in the new addendum – we've addressed that, you and I, haven't we?---Yes.

What procurement would be required in those circumstances going forward, please?---I can't answer that.

10 Well, could you have a think about it?---Pardon?

You didn't ever think about it, did you?---No.

15 You just wanted to show "Hey, we had a policy, and it's all okay"?---We wanted to - - -

20 "What we did is fine in accordance with it"?---Counsel, we wanted to become compliant. We knew we had a – we had a problem. We had to fix it, but it certainly wasn't deceit. We wanted to be – be compliant, move on and get this done, and that – I can't say any more than that because that's the position. You'd have to ask the other board members in their own mind - - -

I understand?---- - - what their position – but that was certainly my position.

25 Let me be clear so you have a chance to comment and then go away and think about it a bit more. The proposition I'm putting to you is this: you appreciated that you had never complied with the procurement policy that was always in place at Racing Queensland from the very first day?---No, I don't think I did. I – I didn't turn my mind to it. I mean, it's an executive – it's an executive position, not - - -

30 Yes. You did?---No, I didn't.

35 You knew that Contour had never gone to tender. You said a few times?---Yes, I – I know. Yeah, I knew that Contour had never gone to tender.

And you knew that the policy required tender?---I – look, I wouldn't comment on that. I'm not sure. I'm not sure.

40 Okay. You see, the problem, Mr Bentley - - -?---I mean, I - - -

- - - with this approach that you've used when it's public money and stakeholders' money is that after the event going back, how can anybody see any transparency in the selection of the right tenderer to show that it was value for money? How do we check it out? Because you didn't get any tenders, we can't tell?---That's correct.

45 That's correct. It's as easy as that. \$110 million was going to go forward with a policy that said, "We don't have to do anything"?---Oh, no. That's what we were

5 trying to do. We were trying to get everything compliant so when we did go forward, we would do private tenders, we would do everything properly. That – that was – that was the idea of all this, getting compliant to make sure going forward – and I can assure you we would have – we would have adhered to all the – all the policies going forward. I admitted to you before, I mean, we were a bit – bit lax on the – on the purchasing policy. I can't say any more than that, counsel, because that's the situation as I felt and I understand at the time.

10 Okay. To finish our discussion about this – and I'm sorry to keep talking about it. To finish it, you see, the problem I see with the – the other problem I see with the new addendum is it has a sole supplier option which gives the company the option of no procurement again. You see what I mean?---I see what you mean, but as I say, that is a working – that is a working policy.

15 I don't get those – what does that mean?---I mean it's commercial – I mean it's commercial now, and we – we would – as I said to you, we would absolutely adhere to that.

20 I hope that's not the best you can do?---Well, it - - -

Go away and think about it and give another statement as to what to you really mean about it?---Okay.

25 Because it looks like you were just putting up what was ever required to suit the facts. There was no intention of procuring properly. You see what I mean? That's the point?---We were mopping up a mess, but going forward we were going to fix it up.

30 Okay. Mopping up the mess.

COMMISSIONER WHITE: Well, as I understand your earlier evidence, Mr Bentley, it was really going to be that those under Contour were going to have to comply with the policies?---That's correct.

35 Contour itself has now slipped into a role where you feel you've got to keep them on?---I – is – excuse me, your Honour. Is the intention that we put this - the sole supplier in so Contour didn't have to go through it in the future? Is that – is that the contention that counsel has made?

40 Is that - - -?---No. That wasn't – that certainly wasn't my intention. No.

Wasn't?---No. I've only just realised what – where we were going. I couldn't quite follow it before.

45 MR BELL: 336, please, Mr Bentley?---Yes. I remember that.

Okay. This was 31 August 2011, fee proposal from Contour?---Yes.

31 August. Is that fair enough?---Yes. That's - - -

5 You remember that document?---That's – yes. That's the fee proposal. This – this came about a couple of times during 2011. I asked Mark Snowden just please keep an eye on this to make sure that – I mean we're getting value for money.

10 And this document that was produced by Contour in August was the fee proposal that was operated on for the work after August even though it wasn't executed, isn't it?---That's correct.

Okay. If you go to 336A, please, you see your signature there?---Yes.

So you signed that contract on the 29th of March 2012?---That's right.

15 Why'd you do that?---So we've had a – had a contract with Contour.

20 That was about nearly the last day as chairman, wasn't it?---Well, we were tidying up all the bits and pieces and the loose ends, definitely, and it was also a part of the business cases. I mean we were doing the business cases right up until the death.

“Tidying up” is a pretty good word – tidying up?---Well, I haven't got any other word to say it.

25 No?---I mean there was – there was the loose ends there to tidy – tidy up and this is all – this is all part of the – the internal checking that – to make sure we had everything right and going forward. It's not – it's not the fact it was the 29th of March – the fact it hadn't been done.

30 Well, certainly it was more likely than ever that scrutiny would occur after the 29th of March?---Yeah, sure.

Yeah?---I mean I'm not trying to hide it – hide it at all. In fact, I even wrote on it, as you can see.

35 But the funny thing is why sign it at all if there's nothing to hide?---Well, because we didn't have a contract.

Exactly, so why hide it, you know?---I'm not hiding it.

40 Well - - -?---I mean I – I signed it. I – I didn't know if it was an oversight. I didn't know. Is it one of these things that had slipped up?

45 You see, when people sign things after all the job is done, it's a bit odd. They must be doing it for another reason?---Oh, no. There's no – there's no other reason. I mean it was brought to my attention; I signed it on that date. I didn't backdate it or anything like that. That's – and that's the story.

Okay. Now, 336B, please?---I have 3 – I have it.

I'm sorry?---I've got it.

5 336B is an email from Paul Brennan - - -?---Yes.

- - - of Contour to Adam Carter and Mr Snowdon, Brett Thomson, Mr Fulcher and Amy Hayne at Contour, and I'll let you read it. In – particularly the second paragraph: “A fee proposal was sent to Racing Queensland on 31 August which
10 included all of the relevant projects except Ipswich. The proposal was very clear that its aim was to provide RQL with rigorous scientific engineering information to enable RQL to provide adequate levels of information to government in support of the business case funding applications. The proposal also provides a thorough scope of works,” and then it's set out. And then if you go to the second last paragraph:
15 “Due to the level of scrutiny that this issue may receive, Contour believes the best option is to utilise the proposal that was provided some seven months ago and to treat the two outstanding issues by exception”?---Yes. They're making a suggestion.

20 Beg your pardon?---They're making a suggestion. Yes.

Do you remember that suggestion?---Don't – no. I don't remember that.

25 Okay. And then if you go over the page to 336C, please, this is a letter from you to the Queensland Audit Office, 26 April '12, isn't it?---Was that in – in response to a query?

Look, I don't know?---I don't know either.

30 But it looks like it was, because you wouldn't write to the Audit Office normally?---No. I wouldn't think so.

Particularly at that date - - -?---Yeah.

35 - - - the 26th of April '12. See what I mean?---Yes.

So they were obviously doing an audit, weren't they, or something like that?---Yeah. I can't – I can't recall – I – the letter's certainly mine and I mean I think that I concur with what's said there.

40 And what you say in it is you're trying to explain the Contour issue, and in the last paragraph: “The control body has always had a stringent audit regime and to my knowledge no issues have been raised regarding this practice”?---Yeah. I think that
- - -

45 Could you explain that now after all you've said today, please – why you told them that?---I think – I – I don't remember the – what issues have been raised by – there's been some issues raised by Deloitte - - -

No. What you're saying there is no issues have been raised?---Oh, that's playing words.

5 Sorry? No. What you're saying is – let me read it again: “The control body has always had a stringent audit regime and to my knowledge no issues have been raised regarding this practice.” What you're telling the Audit Office is, “There's never been a problem with us doing what we did with Contour. I don't know what you're talking about”?---Well, I don't know. Has there been an – something – something raised by some – by an outside party?

10 No one's – I'm not saying there is. But your point, you see – if you look above – you're talking about the retainer of Contour who had the unique understanding. “Due to the significant intellectual property invested into specialist consultants, it has been common practice that engagements for the provision of specialist services are ongoing whilst these consultants” - - -?---Well, that's correct – ongoing.

15 Yeah?---Yes.

20 Yeah. “As Contour had acquired a unique understanding of the control body's desired design construction, project management, occupational health and safety standards, this strategic partnership has continued following insulation of the synthetic track, which was managed for the control body by the external company, Arben Management”?---Yes.

25 “The use of Contour is the same.” You see that?---Yes.

30 So it tends to suggest to the Audit Office that there was no requirement for – in this company – for tendering process or comparison of prices before undertaking consultants. That's what it's tending to - - -?---Apart from the last paragraph. I've disclosed to the Audit Office what – what the actual situation is.

Yeah, exactly. Meaning - - -?---I mean stringent audit – audit regime is – is Deloitte's doing – doing the audit – the internal policies.

35 That's the one I showed you, you see?---Yes.

I couldn't find one other. That one said, “Hey, you haven't got any preferred suppliers”?---No. They – they do it all the time.

40 I know, but the point – that when they raise something, you don't do anything about it?---Okay.

45 But not only that, you see, what this is saying is, “We don't do any tendering; we've got a good program that works well. We just retain Contour and other people without any procurement process like getting tenders”?---Well, that's true, isn't it?

It seems to be true?---Yes.

But the façade of having a purchasing policy remained throughout, and the board kept approving the policy, I suggest to you, pretending that it meant to comply with it?---I didn't think we went down to that – that level of – of detail. No. I don't – I don't accept that, counsellor.

5

Okay. Did you ever comply with it?---Counsellor, I'll – I'll accept that – I mean that we were a bit – bit lax with it. Yes. But I mean intention – any intention to deceive is not correct.

10 COMMISSIONER WHITE: How are you travelling with questions, Mr Bentley – Mr Bell?

15 MR BELL: Well, I've got synthetic tracks to talk to Mr Bentley about. I suppose the best thing might be to break now if that's convenient to you, Commissioner, and to you, Mr Bentley, and I can consider how much longer I've got to go. But I think I do have to address some of the synthetic track with Mr Bentley before he goes.

COMMISSIONER WHITE: Mr Bentley, I think, is very keen to vacate that spot.

20 WITNESS: You can – you can rest assured, your Honour.

COMMISSIONER WHITE: I'm really inquiring whether sitting on a little longer would enable that to occur, rather than the other way around. If you think not – because it is quarter to 1 – we can break and come back.

25

MR BELL: Yeah. I don't think I'd finish in half an hour, your Honour – Commissioner.

WITNESS: I would've – I would've preferred to continue on. I mean it has - - -

30

COMMISSIONER WHITE: I think - - -?--- - - - this is the – this is the fifth day and I - - -

MR BELL: No. Well, I know. I know?--- - - - I'm – I'm starting to flag a bit.

35

Look, I do feel for you. I absolutely appreciate what you're saying; it's just that what I have to do is do other witnesses straight away afterwards. So if you can bear with it a little bit longer I'll try and cut down the amount on that area?---Okay.

40 If you don't mind?---I do.

So quarter past two.

45 COMMISSIONER WHITE: I think that's almost a promise, Mr Bentley, that you might not come back - - -?---I'm not – I'm not looking, your Honour, to cut it short. I just would have preferred to keep going while my mind's on it. I take a while to get back into swing again.

MR BELL: Yeah. I understand.

COMMISSIONER WHITE: I think - - -

5 MR BELL: I'm sorry.

COMMISSIONER WHITE: I think perhaps we might have to come back, though, because people do sometimes get tired - - -?---So that if - - -

10 - - - and Mr Bell's been on his feet just as much as you've been subjected to a lot of questions, and sometimes it's quicker to stop - - -?---Okay.

- - - and keep going. So if we break now, we'll come back at the usual time, quarter past 2, I think.

15

MR BELL: Thank you.

20 **THE COMMISSION ADJOURNED** **[12.48 pm]**

THE COMMISSION RESUMED **[2.15 pm]**

25 **ROBERT GEOFFREY BENTLEY, CONTINUING**

EXAMINATION BY MR BELL

30

MR BELL: Mr Bentley, want to talk, as shortly as we can, about synthetic tracks, please?---Okay.

Does Mr Bentley have the bundle there, please.

35

Probably the best thing is to go to 360B, please, which is the second divider. What happened was, Mr Bentley, just to give a little background, with the synthetic tracks was that approaches were made to the government for a grant to install three synthetic tracks in Queensland?---Correct.

40

And that grant was eventually given and then it was necessary to get work done for it and get quotes and that sort of thing. I wanted to talk a little bit about it. Could you look at that document, and what it seems happened – what seems to have happened is that in November 2006, Queensland Racing were inviting this company and other companies to provide an expression of interest to design, engineer, supply and construct an all-weather synthetic track at the Sunshine Coast. And you see in the third paragraph: “This is the first of three expressions of interest documents which

45

will be forwarded to in the coming weeks,” and that means that for each of the three tracks, there was a different request for an expression of interest.

Do you recall that?---Yes.

5

Okay?---It would have happened, but I don't – don't remember there was three – three expressions of interest. Was there three?

Three. Yeah?---Yeah. There was three – three tracks proposed: Gold Coast,
10 Toowoomba, Sunshine Coast.

Yeah. So what happened was it was put out by Queensland Racing separately three times and people put forward their expression. And in particular, if you don't mind going to 360C, please, by the following year – that is, 14 June we're talking about,
15 November 6. Now we're talking June 7. Proinn's Group – Proinn Group had obviously provided three different expressions, and this letter from Reid Sanders is rejecting the three of them. You recall that?---Yes.

Okay. In particular you see in the first paragraph: “Following an extensive
20 investigation process, Queensland Racing has considered your expression of interest to supply synthetic tracks to Sunshine Coast, Toowoomba, Gold Coast. We wish to advise that your company has been unsuccessful with its expression of interest.” So it seems that Proinn missed out on all three after expressing interest in doing –
okay?---That's correct.

25

And - - -?---Proinn is – was the agent for Polytrack.

Yeah. That's exactly correct. And then what happened was – if you go to the next document – is a business case, and business case means that before the government
30 would pay down money for a particular project, it would expect, or it wanted, business cases put forward by QRL?---Correct.

And Pricewaterhouse prepared this one in July 2006 at least, and you recall that they were to be put forward to the government?---Correct.

35

Okay. If you don't mind going to page 20 of it, please. In the last paragraph: “Part of the business case is that Equestrian Surfaces International will be engaged to implement the synthetic surfaces across the three racetracks. This was decided upon by the project control group as it (1)” – or, I should say, first dot point – “ensure
40 consistency of surfaces across all three – all selected locations – reduce problems, reduce project cost.” You see that?---Yeah. There was good reason – there – there – they were good reasons, good commercial reasons to do that.

So what happened was after that business case was put forward – if you go to 360E
45 you'll see a letter written by you to Mike Kelly. It was in relation to an article written in the Courier-Mail on the synthetic tracks, and you were writing back responding to the Office of Racing about it. Are we at that?---Yeah.

And in particular, if we look on the second page, the first item: "Polytrack could not guarantee that they could replicate the same surface for a second track"?---Yes. I

5 Your - sorry?---Yeah. I believe that's correct.

Your point to Kelly – to Mr Kelly was that there was legitimate reasons, one of which was that one?---Yes.

10 No consistency?---That was quite a – that was quite a important one. Yes.

So it would seem that at least in the mind of Queensland Racing, the fillet was that we would go with Cushion Track and not this one or the other ones?---Yes. Did you want me to elaborate on the reasons why?

15

No. I'm not really interested - - -?---Because there's - - -

- - - but you do it if you wish?--- - - - there's some quite genuine reasons. The Polytrack is a very good surface. It's probably the best surface, but the major component made up of the Polytrack – they use old telephone – you know, the very thin wires, and it's cut into small pieces and covered with a gel. That gel's toxic and that was a consideration that was made, and the reason that they couldn't guarantee the second and third track was because they weren't sure they could get the telephone cable to chop up. But in the end I mean it – it wouldn't have been suitable because of the toxicity.

25

I see. So in any event, it would seem that there was a commitment to the thought of Cushion Track for the three locations?---Yes. There was.

30 But as it turned out as time – as events unfolded, questions arose in relation to Cushion Track, I think, didn't they? Do you recall that?---Yeah. I – I do and I think it wouldn't have mattered whether it was Polytrack or what it was. Questions would have arose. It was the idea of the synthetic track rather than - than that particular product.

35

Okay. Well, I'm suggesting to you that questions arose, even in your mind, in relation to Cushion Track, and I'm going to show you the correspondence?---Yeah. I – I agree with that. I mean there were teething problems like if you buy a new car, often there's teething problems.

40

Because you see, it was a new thing, wasn't it?---Yes.

In the world – that is, synthetic track for the primary track. A synthetic track for the primary track was a new concept - - -?---No.

45

- - - and particularly for Cushion Track. They were only in one place in the world as the primary track, weren't they?---That's correct.

And that was in Hollywood, wasn't it?---Yes. That was Hollywood Park.

Okay. So in any event, if you don't mind going to 361?---361 I've got.

5 361, please. This is an article, and you see in the middle column, coming towards
the foot of the page, a paragraph: "Obviously, the formula must be right, a situation
of which Bob Bentley, the driving force behind the rise of Queensland Racing and
never slow out of the gates, is aware." And then if you go over to the next column,
10 he says he's quoting you in saying, about halfway – about a quarter of the way down
the third column, the right-hand column: "But synthetics have issues that are
absolutely critical. One is they haven't perfected one that will stand up in the tropics
or subtropics. You can't throw it down and it must be maintained properly. We are
working with the Singapore Turf Club"?---Yes.

15 Yeah. Okay?---That's correct.

And then a couple of paragraphs down: "The biggest trouble with synthetics is the
breakdown of the substance through contamination" - - -?---That's correct.

20 - - - "because of horses coming on with mud, manure and straw on their feet. You
have to keep them clean. None of the physical things are insurmountable" etcetera.
So that was the start of problems, or at least uncertainties, about the idea?---Oh, I
think that's – no. I don't think there was the uncertainty. I mean I think that was
25 spelling out that – I mean there was going to be issues, doesn't matter which – which
synthetic track you use. That – that – those problems would be – would be the same
with all – all tracks.

You see, the idea of the synthetic track as the primary track was new country for
Australia, wasn't it?---It was.

30 And the idea of committing to three tracks before actually seeing how it worked here
might create problems going forward?---Yeah. We – we committed to three tracks.
That was part of the – part of the program but I feel that we could have stopped. If
there was major problems we could've stopped the other two. The first track went in
35 at Caloundra not at Toowoomba. And the – and the reason why in my opinion and
the – and the chief steward's opinion and a lot of other people's opinion is why the
track had to go in at Toowoomba as a synthetic.

40 Yes. But by the time final decision was to be made about Toowoomba, further
problems had arisen about cushion track, hadn't they?---Yes. And they relate to that
– that article there that you're saying – that when I went to Hollywood Park, it wasn't
the track that was the problem it was the way it's being maintained and looked after.

45 But let's have a look at that because you are precisely right. What happened was – if
you go to my document at 363A, please. Sorry, I'll get you to go to the one before,
Mr Bentley, so I don't go backwards. 362, please. In mid-2007 in fact the 12th of

July, you write to Neville Stewart who's chairman of Toowoomba. Do you see that?---Yes.

5 And then at the foot you're giving him reassurance, "numerous trials will be conducted at Corbould Park on the Sunshine Coast prior to confirming the surface for other locations?---Yes.

And then over the page on- - -?---It certainly was the intention at the time, yes.

10 And halfway down the page on page 2, "I would like to place on record that at this stage the preferred option for the construction of a synthetic track is on the existing proper course", talking about Toowoomba?---Yes.

15 And then the next paragraph, "The decision to install the synthetic track on the course proper will be with full consultation with Toowoomba Turf Club and will only be recommended if this is the best outcome for all stakeholders in the Queensland racing industry." So it looked like the expression you were giving to Toowoomba was you're open-minded about it going in up there?---No.

20 Well, my point is that your letter, you see, is suggesting at the bottom of page 1, we're looking at Corbould Park and seeing how it's going. We'll keep monitoring that?---The timeline is 2007?

Yes?---Had the track been installed at Sunshine Coast?

25 You know, I don't know?---I – I – well, I'm just trying to get the timing.

But my point is only that you say to Mr Toowoomba chairman, "numerous trials will be conducted at the Sunshine Coast", you see?---Well, they were.

30 Yeah. But that tends to indicate, "don't worry, we'll have a look at how it goes there and make sure it's good before we commit you to it"?---Oh, that – that wasn't really the intent of that, no. We ran – we ran trials of horses but not a trial of the track – actual physical trials – the horses running on it.

35 Okay. Well, just over the page, halfway down I showed you, "The decision to install the synthetic track on the course proper will be with full consultation with Toowoomba Turf Club and will only – will only be recommended if", you see – the if means maybe?---Yep.

40 And my point is that it was maybe for Toowoomba because we're going to look at what happens at Sunshine Coast?---Well, the maybe for Toowoomba – I mean, the consultation of the Toowoomba Turf Club was – the club had to agree to it going in.

45 Well, I thought this letter was talking about performance being the maybe?---Full consultation with the Toowoomba Turf Club will be only recommended if this is the

best outcome – can't say for all stakeholders in racing – all – all doesn't mean – all means 50 per cent or 50 per cent plus one.

5 Yeah, well exactly. I accept that. The point being, that I'm trying to get at is that it looks – that you're saying to the Toowoomba chairman, "Look, hold the phone. We're going to look how it goes at the Sunshine Coast and don't worry, it will be in consultation with you."?---No. It was our preference to put in a – a synthetic track at Toowoomba, definitely.

10 I know that. I know it was your preference. In fact, it was a strong preference and we'll come to that. But aren't you saying to Neville Stewart that the if is subject to performance at Sunshine Coast?---No.

15 What – what's being pointed out to me – the first three lines on the second page, "The Clifford Park installation will follow. However in the meantime the track and training evaluation will be carried out at Clifford Park." That's what's been pointed out to me?---Yes.

20 My suggestion to you is because there was no main track experience with cushion track, the proposal that you're advancing – or sensible proposal would be to see how it goes at the Sunshine Coast before committing to it – that is cushion track?---Cushion – cushion tracks, all brands, all sizes are for training and racing.

25 No, I know that. I know that?---So if it performs in training, it's fine for racing. Whether it's the – and it depends if you've got a track of 2000 metres or a track of 1600 metres. It makes no difference.

30 Okay. Anyway, let's see if we're talking about the same thing. What I'm trying to demonstrate is that it was new to use cushion track on the main track. Everybody knew that. It had been done at Hollywood. That's right?---The actual brand of cushion track, yes.

35 Yes. Well, that's my point. And to commit to cushion track for all three at the beginning wasn't a good idea because you just see how it goes first – in our conditions here and in the heat?---We didn't – we weren't actually committed to three tracks. We got the funding for three tracks. My understanding was, I mean – and we got a guarantee. That's why we got a guarantee out of cushion track. And we didn't – we wouldn't have ordered the second track for Toowoomba until such time as we were certain that it worked at Corbould Park.

40 Okay. So your answer is yes, I'm agreeing with you, Mr Bell – is it?---Oh, better ask the question again.

45 You're saying yes, it was subject to performance at Sunshine Coast, are you?---We're saying, I mean, in those conditions – I mean, if something would've gone wrong. We were reasonably confident, I mean, it would work. But Toowoomba wasn't – wasn't committed at that stage to cushion track.

See I thought that the business case we looked at showed commitment to the one company?---Well, you're asking me what my opinion and my interpretation of it was and that's what it was from the practical point of view.

5 Okay. So let's go to 364A please, Mr Bentley. What happened was- -?---648.

Oh, I mean 363A, please?---363A?

10 Yep. Thank you. What this document is, is a questionnaire that was provided by the Office of Racing, the government, in relation to the synthetic track proposal where in the left hand column is their query and the right hand column is the answers given by Queensland Racing. See what I mean?---I see.

15 Okay. And then if you go over the page, please, and the third last one, commit – are you there yet? The third last one commences page 10. Do you see that?---Yes. Page 10?

20 Yep. Page 10 states, “Equestrian Surfaces International Limited was engaged to implement the cushion track surface across all three tracks.” and the comment is, “our understanding was trial equestrian surfaces was only selected for Corbould Park. Please clarify?” See that?---Yes.

25 Okay. And the answer from Queensland Racing is, “Change completed. Removed ambiguity.” And I think that means, “We're going to white out what we said about that in the draft business case of a commitment to the one brand.”?---Are they Racing
- - -

30 See at the top of the column on the first page, it says, QRL response?---Yes, I see that.

35 Okay. So I think this is the response that was given back to the government, you see. “Change completed. Removed ambiguity.” And I think the point being made was that, “Once we do this change we're showing that we're just committed to one, namely at the Sunshine Coast and we're going to keep observing by saying this.”?---Well, I would've thought that would've been prudent.

Well, exactly. Exactly?---Yeah.

40 Because there was no other experience around Australia. You know what I mean?---There were other synthetic tracks, different conditions.

45 No, sorry. No other cushion tracks around Australia. There was only one in the world at Hollywood?---No. But we – we're making – we're making an issue of the cushion track. We really should be talking about synthetics.

Okay. Well, my point- -?---There's very little difference between the performance of each of them. As I said, if we could've got the polytrack I'd say we may have

chosen the polytrack because it was absolutely proven because of this gel cable. I mean, the track at Lingfield in England – it's a great track. It really is and it's one – it's the first poly track that went down. We saw it. Works great but I mean it's – it's very heavily laced with poly – [indistinct]

5

Okay. You see, I'm just investigating here, Mr Bentley, with your help what your thinking was. Because at first I could see there were three different expressions of interest out but then as the responses came in Polytrack got wiped on all three and it looked like you were committed to the one cushion track for all three. But when the government asks it, you go, "No, that's an ambiguity" and you delete that. And so it looks then like you're only committed to one?---Yeah. You gotta look at the situation as well. I don't mean to say that in that form but there's \$12 million hanging out from government- - -

10

Yes?--- - - -to drought-proof some tracks and get some synthetic tracks and get some decent facilities for trainers to train their young horses on. We took the opportunity to synthetic tracks. We'd been looking at it for quite a while. And sure, we put the first one in at Corbould Park and it wouldn't have been very smart to start doing the next one til we got this one right.

20

Exactly?---Okay.

You see, it looks really like you were committed to cushion track for all three, even though you say that now?---Well, we would've like it – we would've liked cushion track for three because then, you're for sure – you've got consistent machinery because there's specialist machinery- - -

25

I know what you would've liked?--- - - -You can interchange them too. There's a lot of reasons to go with the one brand of – it could've been polytrack – gone with it - - -

30

See, we're not really addressing my question by saying, "We would've liked". I'm saying, it looked like you were committed, you see. Committed is different from would've liked. I know you would've liked consistency and I understand that?---We would've – we would've, yeah – we wanted to be committed to the one manufacturer for the three tracks.

35

Mr Bentley, it takes so long, I'm sorry- - - I mean I'm talking - - -

I'll just tell you what I mean. It takes so long. I'm just trying to test this – that it looked like you were saying to the government early, "We're committed to the one manufacturer, Cushion Track."?---Yes.

40

Okay. But indeed?---That was the intention at the time.

45

But indeed, as time went on and these events unfolded it looked then like you were saying, "No, no. I wanted to have a look at how Sunshine Coast went because that

was sensible, before we committed to cushion track for the next one.” So – do you see what I mean?---Yes.

That’s what I’m testing?---Yep.

5

Now, it looks at this stage when you say to the government in this document, “Change completed. Removed ambiguity.”, that you’re saying to the government, “Don’t worry about that. We’re not committed to the one manufacturer for the three tracks.” See what I mean?---That’s what – that’s what it looks like.

10

Yeah. But in fact you were committed to cushion track for the three and you definitely wanted that to happen, didn’t you?---Yeah. We wanted – yeah, we wanted consistency, yes.

15

Okay. Let’s go to 363B, please. This is a business case for installation of synthetic tracks. And then if you go over to page 18 in the bottom left hand corner, please. You see there, program contractors?---Yes.

20

Okay. First two lines, “Queensland Racing undertook extensive selection process in determining most appropriate synthetic surface to suit Queensland conditions and achieve the outcome sought.” And then if you duck down to the next paragraph, “Equestrian Surface International is engaged to implement cushion track synthetic surface at Corbould Park.”?---Yes.

25

And then a few lines down, “Queensland Racing are yet to determine if Equestrian Service International will be engaged to establish.”?---Yes.

So it looks that you’re telling the government in this business case that that was in fact the situation?---Yes.

30

Okay. Now, then, after that document, would you mind going to 364A, please? Do you remember this document was sent to you by Mr McEvoy?---Yes, I do.

And it- - -?---I don’t remember the document - - -

35

Yeah, okay?--- - - - I remember the incident, yeah.

And what it was about was people from Toowoomba raising concerns that they’d heard about or learnt of at Hollywood Park about the cushion track performance over there?---That’s correct.

40

And this document was about that, and I think you’ll see about the second line, it says, “Points noted by Ian,” and they were some of the concerns that were out there and raised by Toowoomba, weren’t they?---They were raised by Toowoomba. I don’t necessarily believe that, I mean, they were coming from other people, but that’s fine. I mean, I’ve got to accept that at face value.

45

Understood?---But being at the coal face I think that there was another manufacturer been trying to wide out the situation, but - - -

I see?--- - - - that's - I - no proof - - -

5

Understood?--- - - - but that was my feeling at the time.

So then - the next document, 364B, "On the 22nd of June in '07," - this is a letter from you to Mr Stewart, Toowoomba, of course- - -?---Yeah, we had a good sort of a argument at - - -

10

A bit of a?--- - - - different times, but this is not all the argument. I mean, the verbal arguments are better than this.

15

Okay. So then if you go over, please, to the second page of it - of your letter I mean, and then the first new paragraph - it's about seven lines down - "The allegations as to the suitability of cushion track made verbally by you and set out on page 2 of the facts are serious, and, if correct, would make the cushion track entirely unsuitable." I'm sorry, you might be in the wrong tab, I'm told. 364B, please?---364B, the second paragraph?

20

Second page, please?---Yes, I've got that; the allegations as to the suitability?

Yep, just those four lines, "Allegations as to suitability," and then in the second sentence, "QRL is obviously concerned to ensure that the appropriate surface is selected."?---Yes.

25

And then down about four paragraphs, you see a paragraph commencing, "The information collected by Toowoomba Turf Club," see that part? Have I got you in the right place yet? It's a paragraph at about point six of the page?---Yes, I've got it.

30

"The information collected by the Toowoomba Turf Club would have been helpful in any concerns or problems brought to QRLs attention during the expression of interest period. The expression of interest period was conducted over six months, with an evaluation period of five months. There was no less than 10 major international local suppliers that submitted an expression of interest. If the Toowoomba Turf Club had been collecting information on synthetic tracks, it seems inconsistent that the allegations made on June 20 have not previously been evident. There was no previous comment from Toowoomba on the suitability of any supplier or product." And then you talk about cushion track, and then on the next page at about point 5, "The synthetic track at Corbould Park will be open to all, and will undergo vigorous evaluation before consideration of any offer to other clubs to install a synthetic track." You've got me so far? Do you know where I am, I'm sorry?---That was - was that page 3?

35

40

45

This is the third page, yes, at about halfway down the page?---Yes. QRL [indistinct]?

The next one, the next paragraph?---Yep.

5 Yep. “The synthetic track at Corbould Park will be open to all, and will undergo vigorous evaluation before consideration of any offer to other clubs to install a synthetic track.”?---Yes.

10 See that? And then the next paragraph you see, “The Toowoomba Turf Club will no doubt appreciate that for the continuing success of racing in south-east Queensland a consistent all weather track surface needs to be installed at major venues. It is QRLs intention that if the cushion track meets or exceeds expectation this will be the track surface offered for future installation.” And then I’m jumping a paragraph, “The installation of a synthetic track to a club will be an offer. A synthetic track will not be installed against the wishes of a club. There will be no need for government to be involved. The track offer will be up to the club to accept or reject.”?---Correct.

15 Okay, so what happens after that is, if you don’t mind going to 364C, please, and 364C: when you went to – you went to Hollywood, I think, didn’t you- -?---Yeah. A very quick trip, yeah, but not specifically for this problem.

20 Yeah, and you inspected and asked questions over there and you saw there was a maintenance regime that was necessary?---Yep.

And just at the- -?---Excuse me, Counsellor.

25 Yep?---The – we saw what the problem was.

Yeah?---The problem was lack of maintenance and lack of cleanliness.

30 Yep. So this is all expressed here. I’ll show- -?---Because it was two and a half – I think something like two and a half thousand horses are using the track in the morning, so you can imagine what it would be like if it’s not properly supervised, and it wasn’t, and with that number of horses a synthetic track is necessary. You’d never run that sort of – on a grass track.

35 Okay. So what happens is after the trip, about halfway down this page – I hope you’re on with me at 364C- -?---Yes.

40 - - - reads, “Sanders’ rights, to Dennis Moore: cushion track,” and the second paragraph, “I noticed on the Weather Channel that you had extreme heat yesterday, Wednesday. I was wondering if you could provide any feedback on the – on how the cushion track raced and performed under such hot conditions,” and then Dennis writes back above to Reid, “It seems as though during hot weather the track becomes looser. I felt that if we could have watered and used the track master harrows between races this would have helped. Currently, we are having trouble with the trainers understanding this,” and then a few lines down, “Paul Harper believes, as I do, that you have to adjust your maintenance for the weather conditions that you’re racing the training under.”?---That’s correct.

“As far as we – as far as what we did on Wednesday, it was the same maintenance that you’ve seen us perform during your visit; harrow, compact, water, and harrow.”?---Yep.

5 And that’s the visit to Hollywood, is it?---Yeah. With the cushion track it wouldn’t matter which one it was, because every area’s different. It’s different from Caloundra to the Sunshine Coast, the Gold Coast. It depends on the rainfall, the heat, the humidity, and you must adjust your maintenance program and look at the machinery you’re using, the speed you practice going; it’s a fairly – it’s not just a
10 matter of saying put a synthetic track down, she’ll be right.

Yeah?---We run the horses on it. It’s quite a detailed process, and it would – and there was a fair bit of learning in it, and that - - -

15 Exactly, hence the good idea of not committing to anything until you get the – to know how it works- - -?---Correct.

- - - and how to make it work. So then the next document if you please, 364D, you see is a minuted board meeting of 9 May 2008, when you were chairman. Have you
20 got me?---Yes.

Okay, and then on over please on page 6. The topic is at 2.6 Toowoomba Synthetic Track, and then you if come down to about the last three or four paragraphs, “Following discussions with Toowoomba, the most likely course of action will be
25 option 3. A further meeting has been scheduled for Wednesday 21 May, and then the chairman advised the board that the costs of the synthetic surface have risen considerably in the last six months due to the increase in oil costs and freight. The chairman also advises that the board should be aware that the installation of the synthetic track with associated works at Clifford Park would be in the vicinity of 10
30 million, partly offset by a \$4 million government contribution.” So the costs have gone up?---In round figures that’s correct. It was – the 4 million was never going to cover the full cost of the track at any stage.

35 Yeah, but the price had gone up by this time, hadn’t it?---Yeah. All the prices had gone up, freight had gone up.

Okay, and then jumping one line, “The board approved the commission of a master plan for \$30 million dollars,”- - -?---30 thousand.

40 - - - “and the construction of the synthetic track and associated works at Clifford Park to an amount of \$10 million.”

COMMISSIONER WHITE: I think it’s 30 thousand - - -

45 MR BELL: \$30,000, yes.

COMMISSIONER WHITE: You know how the media like to leap upon big figures, Mr Bell. We should make quite clear it was 30 thousand?---We should - - -

5 MR BELL: I'm sorry, Mr Bentley, it should have been 30 thousand. I said 30 million?---I wish it was 30 million. It would have been – made things a lot easier.

Okay, and then- - -?---I'd say, Counsellor, at that time with that approval: I mean, that was our best estimate at the time.

10 Yes. And then - - -?---Because there was other works beside that. I think we fixed their dams for them, sealed the – sealed the ambulance track and a few workplace health and safety issues that went along with it.

15 Okay. Now, my point is that real doubts did arise in respect of the suitability of Cushion Track for Toowoomba by this time, by the time of this meeting?---Was this – was the track installed?

20 No. The track wasn't installed; it was yet to go to voting. Toowoomba?---Oh, there was – look, there was controversy. I mean it was the old school, you know, not in my backyard and – I mean it won't work and nobody had any – wanted to – wanted to even give it a go, and it was fuelled along by the press.

25 Yeah. But what I was saying was that there were problems that were out there in relation to Cushion Track for Toowoomba?---Oh, yeah. Sure. Yes. There were.

Okay?---There were problems. Yes. No. There were problems bubbling around here, there and everywhere about synthetic surfaces.

30 Okay?---I think it's unfair to - - -

Well - - -?---It's unfair to say just Cushion Track.

35 Okay. Go to the document in that – at the back of those minutes, if you don't mind, please. Have you got the letter from Cushion Track there, to Malcolm Tuttle?---Yes.

Okay. You see it's dated 16 September '08?---Yes.

40 And then if you go down to the second last paragraph, what Cushion Track say is: "In good faith and before a contract was drawn up, our company commenced the shipment of raw materials and maintenance equipment for both racecourses"
- - -?---That's correct.

45 - - - "dispatching the first containers of synthetic fibre from the UK on 30 May '08"?---That is – that is no – that was no problem, because I mean it would've – could've been used because you need – you need spare material anyway. It could've gone to Caloundra.

5 Okay. It could have gone to Caloundra, but this was - - -?---No. It could've gone to Caloundra because you've got to continually buy this material all the time. You have to – you have a stockpile because you're adding – adding to it, because there's horses going on the track. They take some off. So it's all part of a maintenance regime.
Yes.

Yeah. Well, that's [indistinct], but the point was it didn't – it wasn't being shipped out for that purpose. It was being shipped out - - -?---Shipped out for – yes.

10 - - - for a second track, namely, Toowoomba, wasn't it?---Correct. Correct. Yes.

Okay. Now, if you go to 364E, please?---Bearing in mind Sunshine Coast was okay at that time. It was working at the Sunshine Coast, the track.

15 Yes. It was up and working?---Yep.

We talked about that just before - - -?---Yeah.

20 - - - when they were talking about in the heat, you see?---Okay. Sure, but – but I'm saying that I mean it – we would have been satisfied it was working at the Sunshine Coast.

Okay?---And that material would – could've been easily diverted to a third track at the Gold Coast or somewhere else - - -

25 No?--- - - - if Toowoomba didn't want it.

30 Look, all my point is it had been ordered. It was coming out because it was going to a second track, which was Toowoomba?---Well, it could've been – yeah, but if Toowoomba would have voted against it it could have gone somewhere else. I mean we're on a – we're on a schedule to try to keep going here. Yes.

Okay. But it was ordered for Toowoomba, wasn't it?---It was ordered for the intention to be installed at Toowoomba.

35 Okay?---Yes.

40 Now, if you don't mind turning to 364E, please. This is a letter from Reid Sanders, and you know who he is. He was important in this part, wasn't he?---Mmm.

45 About the fourth paragraph: "These are only some of the statements made by ES regarding the performance of Cushion Track in different climatic conditions." And then further down to the last paragraph on the page: "At no stage has Queensland Racing been advised that the track will have inconsistencies in different seasons." And Reid is starting to assert a - - -?---I don't – I don't know whether that's right, but go on.

5 What, that what he's saying is right? You don't know that? Well, my point is that Reid's saying that back to Equestrian Surfaces, you see. So he must be reasonably concerned about it. He's the man who's in charge of it, isn't he?---And – and also he'd be – he'd be hoping to activate the – the warranty so they'd come out. I'd think that's probably his intention.

10 Oh, you mean he's saying one thing but meaning another?---No. I'm saying that I mean he's probably urging that particular statement but that's not – I don't think that's correct. Sorry.

I see. I see. Well, go over to the email behind it, please - - -?---Because I – excuse me, counsellor.

15 Yeah?---I was under no – no illusions that there would be – there would be different inconsistencies from – from place to place, that some of these issues that they're talking about – we knew we'd encounter them, didn't matter what we did and what track we used. So - - -

20 Okay. So if you go to my email behind that, please, you see it's from Reid to Paul Harper of Equestrian Surfaces on the 10th of December. Are you with me?---Yes.

25 Okay. "Following my attendance at Caloundra on Monday/Tuesday of this week, I make the following comments: there seems to be evidence that Cushion Track material will soften in the heat and direct sunlight" - - -?---That's correct.

- - - "that the track temperatures can vary considerably throughout the course of a day, that by maintaining the track on a daily basis the MAT remains near the top of the surface. The trials conducted" – and then two paragraphs down: "To have the track firm enough for racing during the day, the track needs to be very tight and, it is my opinion, might be a little too firm for track work in the cool morning. This may also be an issue when we commence night racing in late February 2009"?---I draw your attention to the – the fifth line: the trials conducted on Tuesday have seemed to be successful, though the top of the surface was a little loose.

35 Yes. Yes?---That – that goes back to what I was saying about the construction and the dynamics of a – of a synthetic track. Depending on how – depending on how you maintain the track there's – what they're calling is the mat is the firm surface under the cushion. It can be varied and it can be rolled and it can be – have a consistency of hardness. The harder the track, the faster the times. The slower the track – the softer the track, the slower. So there's a lot in the maintenance. We – we were certainly learning. There was nothing – there's nothing there that was evident that this track wasn't going to be successful. It was us learning how to get it right and we've got it right now. I mean I believe they've still got it right. When I left Racing Queensland, the track at Corbould Park, everyone was happy and I think they're still happy with.

You're just not addressing the question I'm coming to - - -?---Well - - -

- - - you see, and I hear you loud and clear. I promise you I'm not addressing – and I don't argue with you about the science of the tracks and the doubts. As I said to you at the beginning of my examination of you, it's about the way you went about things, you see?---Okay.

5

So what I'm trying to do is show you the background that, in fact, there were some concerns, and you're telling me there were concerns just now. But keep with the correspondence and we'll be really quick on this. And then you see another email of the 24th of December from Reid to Mr Harper?---Yes.

10

Do you see that? That's about 14 days later. Copies you in, you can see that, and the third line: "QRL requests these results to be provided as a matter of importance, as there is concern on the performance of Cushion – of the Cushion Track. Once again, I reiterate that QRL have had some issues with the consistency and performance of the Cushion Track not only for racing, but also training. As you are also aware, QRL planned a new installation of Cushion Track in Toowoomba in February 2009. The installation at Toowoomba replaces the main racing track and given this, there can be no problems/issues with performance of the Cushion Track surface such as we are currently witnessing at the Sunshine Coast." Okay. That's getting serious, right?---Yeah. Yeah. The issues – the issues were pretty well their own making, but – yes.

15

20

Okay. This is – who's this talking? This is the chief stipendiary steward. We both know that he was very much involved in this part, wasn't he?---Absolutely. Yeah.

25

Yes. And the next paragraph: "If the Sunshine Coast performance inconsistency cannot be rectified in the immediate future, Queensland Racing may be required to reassess the Toowoomba installation"?---That's correct.

30

Okay. And then the new paragraph: "As you would have seen in my emails early today, there have also been issues regarding injuries raised by trainers at Sunshine Coast, and this is reflected in the very poor nominations received for the race meetings to be conducted on 2nd January." And then the next paragraph: "I await the results of the tests conducted and your advice on how" etcetera. So it is the case, isn't it, really, that there were concerns at that time coming to the surface?---Yes. There were – yeah. There were concerns. Yes.

35

Okay. Now, if you go to the next document, please, Mr Bentley, 264F.

40

COMMISSIONER WHITE: 364F, I think.

MR BELL: I'm sorry. 364F. Yes.

364. I'm sorry, Mr Bentley?---That's okay.

45

Do you see this letter of 30 January - - -?---Yes.

- - - 2009? You wrote this letter to the members of Toowoomba?---Correct.

5 And in the second paragraph, the last few lines: “You, as a member of Toowoomba Turf Club, need to be fully appraised of facts and consequences for your club prior to casting your vote. The decision was made by the board of QRL to make an offer to your committee to install a synthetic track on the course proper after full investigation and due diligence was conducted.” And I’m jumping down to the next paragraph: “The decision, after much debate, was predicated on the following principal issues: no sustainable water at Toowoomba, bankable reliable source,” and so on. And then the next paragraph: “From the above considerations, it can be seen quite clearly that the Toowoomba Turf Club and QRL have acted in a responsible manner in committing 10 million to secure the future of the Toowoomba Turf Club in the longer term. It is incumbent on the board of QRL to place before you, the members, the responsibility that the Toowoomba Trainers Association – Mr Dann, 15 Mr Wagner, Mr Wells – has through their actions placed upon you. In any normal rational situation, these decisions are the responsibility of your duly elected committee. The position of a positive vote will see QRL allocate 10 million to undertake the following capital works.” And you set them out. And then if you go to the upper case, “Conversely, should a negative vote be cast, the following will 20 apply.” And have a go at that. “The following will apply. All 57 TAB race meetings will not be returned to Toowoomba”?---Yeah, that - - -

25 “Removal of the cushion track stockpile. QRL will not allow racing at Toowoomba on the substantial - - -”?---Can we just go through them?

Yes, please?---Please? All 57 doesn’t mean that all 57 are going.

30 Sorry. I read that “All 57 TAB race meetings will not be returned to Toowoomba” - - -?---No.

- - - as meaning all 57 would not return?---No. No, I’m sorry. That’s not – that’s not right – what was going to happen. And that’s not – that’s not what was meant there. It was going to be a reduction.

35 Well, let me tell you?---What I - - -

40 Whatever you meant, the poor little member of Toowoomba saw as his options, “Yes, I go with Mr Bentley up above, or no, my club has no TAB meetings coming forward”?---Well, that – I don’t think that that was conveyed, I mean, at – at any meeting.

45 Well, okay. Let’s do it your way. Even if it’s 10 less - - -?---There certainly would have been less. The – the grass track – the track or a grass track at Toowoomba wouldn’t sustain 57, that’s for sure.

You see, this, for these members, amounted to you threatening them to go your way or lose completely, didn’t it?---No, I don’t think so.

Well, it's pretty strong. Don't you think it's strong?---Can I just read the rest of them?

5 Yes, of course?---Yeah. If you read the last dot point in conjunction with the first one - - -

Yes. If I read all the dot points, I'm pretty nervous as a member of Toowoomba?---Yeah, well, it was meant to make them nervous - - -

10 I thought so. Yes?---- - - because it was a serious situation. I mean, we couldn't afford to let the things roll – keep rolling on in their present form.

You know how we talked a lot over the last couple of days about transparency?---Yes.

15 Just turn over the page, 364G, please?---G?

Three - - -?---Is that the last one?

20 Just over to the next tab, please, 364G. You with me?---Yes.

There's an email?---My email?

25 No. The first one is – I think if you look about halfway down – a quarter of the way down the page. It's from Paul Brennan to you. Do you see that one?---Yes.

30 Okay. Paul writes to you, "Bob," and he says, "Please see below an email from Leah in Toowoomba asking QRL to respond. I believe that – I believe we – that the club should respond to the email and simply say that they have an undertaking from QRL that if the cushion track is installed, that they will retain their Saturday twilight position"?---That's correct.

35 "Neville," meaning Stewart, one would think, "has also asked for a fact sheet that can be distributed at their meeting. He is after facts regarding bleeders." Bleeders are horses that aren't doing well on the track?---Bleeders are horses that are – I mean that their lungs bleed, and they're banned.

But it's about - - -?---Once they bleed – once they bleed, they're banned.

40 It's about the track, isn't it? The impact of the track?---Yeah, regarding whether there's more bleeders on a synthetic track as against a grass track, yes.

45 Yes. "I don't think" – this is Brennan talking. "I don't think that we should provide the information as we then permit it to be construed in many ways without our influence. The figures don't look that good. We have provided an opportunity for the members to discuss this with QRL at the latest board – latest meeting we attended." And then if I look up above to see your response, you say, "Paul, correct

in your thoughts on handling this matter.” So you’re approving don’t give them the information about the bleeders, aren’t you?---It would appear that way, yes.

5 Yes. And then if you turn over to the next email which is two pages over and - - -?---Well, correct in your thoughts. Right?

10 Yes. “Correct in your thoughts on handling this matter”?---Well, I mean, he was concerned, as I would be too, about the influence. I mean, if – if people get the figures, people don’t even want to listen to the facts. They just pick out what they want and get - - -

I thought the figures were the facts?---Well, the figures are the facts, but I mean, they – they can construe them any way they like.

15 Okay. It’s better they don’t know, these funny people?---I don’t think we kept anything that – that secret.

20 Well, the figures were kept?---I don’t know – I don’t know whether we had the figures. Right?

Okay. Turn over to the next email?---I wasn’t going to make them up.

25 COMMISSIONER WHITE: Why do you think Mr Brennan said that the figures don’t look too good if there weren’t any?---Judge, I’m – I said I don’t know – remember any figures.

30 MR BELL: Just go over, then, over one page, over to the back of the page we’ve been looking at, please. This is part of the email he sends you from Leah to Paul Brennan. “Hi, Paul. Please find attached an email,” blah blah. And then the next paragraph: “Neville has also asked if you could please provide a fact sheet in a simple and easy to read form for distribution at the special general meeting for members to vote on the cushion track. He has requested that it contain the statistics you quoted at the last members’ meeting on bleeders and horses breaking down on other Queensland tracks in comparison to the Sunshine Coast cushion track. So they
35 had the figures?---I can’t recall that statement - - -

No. I know you can’t recall it?---- - - or – or the figures I - - -

40 But clearly enough, they had the figures, didn’t they?---I – I tell you I don’t know. I didn’t think we had figures - - -

Okay. Well, anyway - - -?---- - - because it was too - - -

45 - - - from what - - -?---It was too early.

Okay. But from what you knew at the time, somebody thought they had figures?---They may be figures - - -

And Brennan was saying, "I don't think we should give them." And you said, "Yeah, that's a good idea. Don't give them." That's the point of this email, isn't it?---Okay.

5 There's no other way to construe it?---No. I'm not arguing.

Now, let's go over to the last email, which is yours. You see it's 10 February 2009?---Yes.

10 And it's from you on the Crossmore email address?---Yep.

"Paul, response should be that the tracking of injuries at Caloundra is being kept in a detailed form as previously the records have been less than acceptable. 95 per cent of horses work on the cushion track, and the injury toll during racing and training shows no increase in injury. Major trainers at Corbould Park advise that there is a notable decrease in injury on the cushion track. Catastrophic injury that has occurred in the last 12 months has not been due to the tracks at Caloundra. This statement should be verbal, not written. Bob"?---Yeah, I – I – I can't give you an answer for the last half-sentence, but I – I don't remember that we had any – any firm and major figures on those – those issues at Caloundra.

No. But if you did, you weren't going to give them. That's the only point we're making, you see?---Well, I mean, that's what the email said.

25 Yes. That's right. There's no hiding from it, is there?---No.

Okay. Do you mind closing that bundle, please. So, Mr Bentley, where we're at is I have no more questions for you at this time, and I what I wanted to make clear to you is the commission aren't able to excuse you 100 per cent, meaning you don't have a need to come back. Under the legislation, because you've been summoned, it may be necessary – and I'm not wanting to do it – to ask you to come back because other statements will come in and so on, and depending upon the evidence other people give. So other than that, I've got no more questions for you. Thank you.

35 COMMISSIONER WHITE: Mr Wilson.

MR WILSON: Mr Bentley has been invited a number of times during his evidence to provide a supplementary statement.

40 COMMISSIONER WHITE: He has, indeed.

MR WILSON: He will do so. We have made a note of those occasions where counsel assisting has said, "Would you address this in your supplementary statement." Could we invite the commission, as we have done before the evidence started, to identify any other matters that they want us to address.

5 COMMISSIONER WHITE: They can certainly be identified from the transcript, I think, Mr Wilson. I'm confident that between us we can probably attend to that, but the supplementary statement is an opportunity for Mr Bentley to add without prompting from the commission.

MR WILSON: I understand.

10 COMMISSIONER WHITE: It's not limited to the matters where Mr Bell said, "I'd like you to go away and think about it and write something." And, of course, Mr Bentley doesn't have to respond to that invitation.

MR WILSON: He's going to.

15 COMMISSIONER WHITE: Yes.

MR WILSON: I simply raised if the commission wishes us to respond to particular matters, we will.

20 COMMISSIONER WHITE: All right. Thanks, Mr Wilson.

25 MR WILSON: An example of that that came up this morning was about the purchasing policy, and all of the questions were directed to Contour – sorry – about Contour. But the suggestion was put to Mr Bentley that the purchasing policy never applied. Now, over a period of four and a half years, does he need to go through and identify the 99.9 per cent of other cases where it did apply? That's the sort of matter that we raised.

COMMISSIONER WHITE: All right. Thank you.

30 MR BELL: Well, I can answer that.

COMMISSIONER WHITE: I thought you could, Mr Bell.

35 MR BELL: My proposition was that the purchasing policy was never complied with. If Mr Bentley can find one occasion, that will help because I said never. So that would be helpful.

40 MR WILSON: I need to raise another matter with you, Commissioner, but it doesn't concern directly Mr Bentley's evidence.

COMMISSIONER WHITE: All right. You don't want to ask Mr Bentley anything at this stage? You'll do it all by statement in reply, Mr Wilson?

45 MR WILSON: Yes.

COMMISSIONER WHITE: All right.

MR WILSON: I thought that was the most efficient use of time, Commissioner.

COMMISSIONER WHITE: I think it is too, but it's a matter entirely for you and, of course, Mr Bentley and Mr Rogers.

5

MR WILSON: Yes.

COMMISSIONER WHITE: That's the decision made. Thank you for your attendance here, Mr Bentley. Much obliged to you?---Thank you, your Honour. Am I excused?

10

You are. Well, subject to - - -?---Yes, I understand – I understand what you're saying.

15 Yes?---That you may want to talk to me again. I understand that.

I hope you'd say you'd be delighted, but I suspect you won't be?---Well, no. This is not the most pleasant place to sit. It's only second-best to over there. Thank you.

20

WITNESS EXCUSED

[3.10 pm]

COMMISSIONER WHITE: Mr Wilson.

25

MR WILSON: Commissioner, can I raise a matter that I raised with counsel assisting before lunch and, I understand, has been drawn to your attention, and that is that there is at least one blog that's been drawn to my attention which seems to be a running commentary on this inquiry. We don't know whether it's being done by someone within the precincts of the court or from an external location.

30

COMMISSIONER WHITE: Because it would be so easy to do it with the live streaming anywhere.

35 MR WILSON: It could be done anywhere. It could be done anywhere. Commissioner, you'd be aware – and what we ask for at this stage is simply a statement from you drawing attention – the attention of people who may be writing things on that blog – and we've shown parts of it to counsel assisting; there's some quite vitriolic comments – that it is a contempt of this commission to wilfully threaten or insult any witness or person summoned to attend before a – before the commission.

40

COMMISSIONER WHITE: Does it reach that level, do you think, Mr Wilson?

45 MR WILSON: Section 9 - - -

COMMISSIONER WHITE: No. I'm not worried about the provision. I understand about contempt, but I meant examples of what's happening.

5 MR WILSON: Insults, yes. That's why we raised it.

COMMISSIONER WHITE: I'd need to see some examples, I think, rather than give a blanket – well, not a ruling but an observation. But if, indeed, it does reach that level, then whoever is responsible for it should be aware of the provisions of the Commissions of Inquiry Act.

10 MR WILSON: We have reference to “big overlord Billy the dribbler Ludwig”. We have reference to “Paul porky Brennan,” and in particular – what do you call it – an entry on the blog: “The noose tightens around parasite Bob. Porky, your turn is soon, you corrupt maggot.” But if we – if you want us to print these all out, 15 Commissioner, we will, but that's the tone of a number of the posts on the blog, and if that's not wilfully insulting a witness, it's hard to think what else could be.

COMMISSIONER WHITE: It does sound deeply unattractive, Mr Wilson, apart from the poverty of language.

20 MR WILSON: Apart. Yes.

COMMISSIONER WHITE: Apart from that. Yes. Thank you. Mr Bell, do you wish to be heard on this?

25 MR BELL: No. Thank you, Commissioner.

COMMISSIONER WHITE: I'm just looking for the section in the Act.

30 MR WILSON: 9(2)(c). The one I was drawing your Honour's attention – Commissioner's attention to was subrule (iv).

COMMISSIONER WHITE: Thank you.

35 MR WILSON: And then there's also section 9(2), sub (h), about if the same thing was said in a court, it would be a contempt.

COMMISSIONER WHITE: Yes. Yes, thank you. Yes, thank you. It's been drawn to my attention that there is a person or persons who are making commentary on the 40 persons who have been served with a summons to give evidence before this commission. The commentary, from the few examples that have been read out by Mr Wilson of counsel, would suggest that they might be described as a threat or an insult to a witness or to a person who has been summoned to attend before the commission. The Commissions of Inquiry Act provides that no person shall do that 45 and, if proved to have done so, will be guilty of contempt of the commission and will be subject to committal to contempt as if that had occurred in the face of a court of law.

5 The commission can either deal with it itself, that is, I can deal with it on proper evidence, of course, or it can be sent to the Supreme Court of Queensland to be dealt with as a contempt. I would wish to warn any persons to curtail their exuberance and be mindful of the real possibility that they might be proceeded against for contempt of the commission.

MR WILSON: Thank you, Commissioner.

10 MR BELL: Commissioner, the next witness it is proposed to be called to give evidence is Anthony John Hanmer, please.

COMMISSIONER WHITE: Yes. Thank you. Is someone getting Mr Hanmer or is he - - -

15 MR BELL: Yes. I think so.

COMMISSIONER WHITE: Thank you. Yes, Mr Rogers has gone.

20 **ANTHONY JOHN HANMER, SWORN** **[3.17 pm]**

EXAMINATION BY MR BELL

25 COMMISSIONER WHITE: Mr Hanmer, could you – after Mr Bell has got your identification from you, if there's anything that you need while you're in the witness box, you can just let me know. If you need any break this afternoon, indicate that to me if you would?---Thank you, Commissioner.

30 Yes. Thanks, Mr Bell.

MR BELL: Your full name is Anthony John Hanmer?---Correct.

35 And, Mr Hanmer, you have delivered to the commission two statements, the first sworn by you the 29th of July 2013 and the second sworn the 11th of September 2013?---Yes.

40 And your wife has also sworn a statement for the inquiry as well, I think – Sue Hanmer?---I think she has, yes.

Okay. And you've also provided some documents, having received a request to produce documents from the commission dated the 2nd of July 2013?---Yes, I did.

45 Okay. Could Mr Hanmer see his first statement, please. This, Mr Hanmer, was the first statement that you swore in relation to matters the subject of focus for the commission?---Yes.

If you don't mind turning to page 8, please, which is noted on the bottom of the pages. Have you got page 8?---I have, yes.

5 You'll see a heading, Queensland Race Product Co and Tax Group. See that?---Yes.

Now, I note you say that you were chair of Product Co, and I take that to mean you were chair of Product Co through the relevant period at the least, namely, 1st January 2007 right through to when you left in April 2012?---Yes, that's right.

10 And in paragraph 23, if I ask you to go to it, please. You refer to the period 2008 when amendments were proposed to the Racing Act and in particular the next you say, "I became aware of Queensland Racing obtaining written advice from David Grace". You see that?---Yes, I do.

15 And then the next sentence, "I showed a copy of that advice to the members of the board of Product Co. I wanted to discuss the advice with the board and to gauge their views to the draft legislation in relationship to their codes and the opinion of Mr Grace."?---That's correct, yes.

20 Okay. Now, then you say, "I also spoke to Bob Lette who had been on the board of UNiTAB at the time who understood detail and intent. The view that he expressed to me was that he did not believe that the construction that Mr Grace had suggested was correct. Mr Lette informed me that he also had one of his partner's review the advice and he also disagreed with Mr Grace's interpretation. See that?---Yes.

25 But this is the part I'm interested in: "We were both of the view that it would not have been the intention to have UNiTAB pay for the same race information twice." See that part?---Yes.

30 Did you reach a view yourself about the proper construction of the product and program agreement?---Yes, I did.

And how did you reach that view? What did you do to reach it?---It goes back some while. It goes back to when I was first appointed to the QTIRB which was the
35 forerunner of the racing board and I was being briefed on what had occurred in racing in previous years because I was considered to be a – an outsider. My skills were not involved in – in racing so I was being briefed. I was brief by Mr Bob Mason, who at that time was the former director of the Office of Racing and he was subsequently became the integrity officer at Racing Queensland or if I may call it the
40 control body. As part of the conversations I was led to believe that the so-called gentleman's agreement was not an agreement at all. There was no agreement. It was simply an agreement not to charge each other – each state – fees. But the – the Racing Minister's conferences going back into the very early 80's – excuse me, the very late 80's - there had been discussion that there would be an arrangement for
45 passing on and payment of fees to the various control bodies for use of information. And this came about because in about 1986 the first racing television channel, Sky Channel, which was owned by the New South Wales TAB at that time, introduced

horseracing onto television. It was suddenly an understanding that horse races and vision could mean massively additional dollars. And this would mean that eventually he who owned the vision would own the world. And so the idea of nobody charging for the provision of each other's product was obviously going to break down and had been discussed many times. And the view was that either New South Wales or Victoria would in fact end that agreement. And that at the time of the product and program agreement, the so-called PPA, it had been written in on the understanding that in the fullness of time there would be charges made against Queensland for punters in Queensland who were buying New South Wales product. And of course the benefit on the other side was New South Wales punters or Victoria punters buying Queensland product so there would be a full interchange of the process and that the writing of the PPA agreement actually covered – covered that process. So one of my understandings at that time was that this was something that in the fullness of time was going to – going to occur. I also have had some experience with – not in a legal sense of course – but in copyright and looked at the process of use and supply particularly in that particular documentation and felt that you would not want to purchase a product – supply a product and purchase if you weren't going to use it. Particularly for large amounts of – large amounts of money. I found that some of the analogies in Mr Grace's notes were not – were torturous particularly. One particularly I recall about it being legal to own a firearm but not discharge it – which I think was actually wrong. I think it is illegal to own a firearm and discharge it. And also the recitals in the PPA agreement quite clearly in – have an agreement in the understanding of what the supply and use process of those two items are which I'm happy to refer to. I turned to Mr Lette because he had a lot of experience being a founding director of UNiTAB, as it was then, and knew as I did the whole story that went through the so-called ending of the gentleman's agreement and where we'd got to in 1990 in the agreement and further on.

Okay. So I think what you're saying to me is, a man or woman who knew the history as you did would know that the product and program agreement was never going to allow for double-charging of Tatts for the information?---That was the point of the legislation and in the preamble to the legislation it specifically says this – this – I'll paraphrase this but – double – the purpose of this legislation is to ensure there is no double-charging from existing wage operators, of which there of course there was only one at that time which was UNiTAB, Tatts Group.

So when you reached that view, that must've been when the legislation came in, in New South Wales in 2008?---It's a little while – a little while after, yes, yes, yes.

So that view that you held about the proper construction of the product and program agreement drove your action, did it?---Well, I – I - - -

Or influenced your action going forward?---No. I – I'm simply the chairman of a group of people, two of whom are from the other codes; the harness code and the greyhound code and four members, excluding Bentley, from the thoroughbred code. Anyone that's sat on boards knows the hardest thing you could ever do is to have other chairmen on your own board and I had two chairmen on my own board. There

was no influencing or driving anything. I couldn't drive anything on that board at all. I was simply a - - -

5 Sorry. I missed – I didn't ask you a good question. Let me try again. That view of the proper construction of the product and program agreement influenced you personally going forward as chairman of Product Co, did it?---It formulated my personal view, yes.

10 Yes. Okay. So - - -

COMMISSIONER WHITE: Can I just – I'm sorry, Mr Bell.

MR BELL: Yes.

15 COMMISSIONER WHITE: I'm just going to tell Mr Hanmer that he can sit back in his chair if he wishes. You don't have to lean into the microphone. That's more comfortable?---Thank you, Commissioner.

20 MR BELL: So, Mr Hanmer, I just want to be 100 per cent clear. When questions arose in relation to Mr Grace's advice, your position that you took was certainly influenced by your judgment of what the product and program agreement meant?---In part.

25 So it did influence your judgment? It did influence your action on that board of Product Co, didn't it?---Yes, yes, yes.

30 Okay. Now, that tends to tell me that if we had a different board than the board that was there. Mr Hanmer – say we didn't have Mr Hanmer we had Mrs Hanmer, for example. Would that mean that if Mrs Hanmer had a different view that would be important to the business of Product Co about the construction of this agreement?---You wouldn't want to have her on a board but - - -

35 But you know what I meant. It's just a model for discussion. Let's not use Mrs – let's use somebody else – a QC – no, that's a bad example, I'm sorry?---I see.

But you know what I mean?---Yes, I do.

40 You see now, that means if your position on that is right – whether or not the product and program agreement allows Tatts to deduct these fees or doesn't, depends who's on the board, doesn't it?---Everyone will have different interpretations, yes.

45 So what you saw is your duty was to think about your view, about how the product and program agreement worked and then vote in accordance with it?---I voted in the best interests of the company, I think in - - -

No, no, no, no, no. We're talking about the model I've asked you to think about because I'm trying to address the fact that you say, "I reached a view because I knew

5 the whole history of the product and program agreement and my view was that Tatts were entitled to deduct.” I understand that. And then I asked you to think about a model that if it was another person, not Mr Hanmer as chairman, that person would be able to do the same exercise and whatever their view was – their view might be no, they can’t or yes, they can. That’s how the person should vote in carrying out their duty as a director of Product Co?---I agree.

That’s the way you see it?---Yes.

10 See, Mr Hanmer, let me ask you to consider this: if you had on the board somebody who didn’t have the great knowledge that you had of the background to the product and program agreement and didn’t understand its intent, that would mean that if there was a majority of those people they’d vote the wrong way. Do you see what I mean?---I think I would ask that by saying that the individuals on the board would
15 make up their own determination and the people on the Product Co board were highly experienced.

In different things?---Yeah, different things, yes.

20 You see, I’ll come right to the point. I thought – I think that what matters in relation to the interests of the stakeholders that you were representing on the Product Co board, is the way the court would determine the proper interpretation, and only the court, because it wouldn’t matter if Flo down the road had a different view to the court or Dave up here did or Mr Hanmer did here or Andrews did there, because if
25 we just ask those people there’d be differing views all the way around the place, but then when you go into court the judge says no, this is the way – is the right approach. You see what I mean?---I do, yes.

30 And that our community, here, I thought – this is my thinking, and I’m asking you to comment – I thought the community had made it clear to everybody that the law decides which way is the proper construction or to answer legal questions and then we all comply with it. You know what I mean?---I agree.

35 So how does your concept work with it? Because I would’ve thought that the chairman of Product Co, sitting there as he would, would think, well, it doesn’t really matter what my view is. I want to know what the court’s view is, because the court will determine what the rights are of Tatts and Product Co. Don’t you think that’s smart?---Well, the four other directors all came independently to their view. That majority felt there was another approach, and the other approach was to first of all go
40 and enquire with the Racing Office about this information.

Okay. Don’t go to that yet; I promise we’ll go there?---Okay.

45 I just want to talk about the model that I’m talking about, you see?---Yep.

Because I’ve got – I need to understand: if you genuinely took the position on the board that you were entitled to deal with the question on the basis of what you

thought the Product and Program Agreement meant, it's a different approach to the one me standing here thinks is your duty. You see what I mean?---But boards are collective animals.

5 They are, but you see when I have – there's a board of BHP. Now, some of them aren't engineers and some of them have to decide whether we put the bridge there or there and what structure, but that board doesn't say I want – I think it should be built over there; they listen to experts. You see what I mean?---And then they make a decision; a decision based usually on a majority.

10

Don't they rely on the expert advice about, for example, engineering questions on building the bridge or advertising questions? Don't you – you just don't listen to your grandmother about how's the best way to advertise the new brand. You go to an expert like yourself, don't you?---Yes, but it doesn't necessarily require legal

15

advice on every decision you make.

No, I accept that, but what we've got here, we all know, with the Product and Program Agreement we've got an issue that arose that was \$500,000 a month significant. You see what I mean? Very significant isn't it?---May I just take issue with you on that?

20

Of course you can?---I mentioned earlier that there was money flowing both ways after the so-called gentlemen's agreement ended. So whilst you're quite right the total aggregate amount may have been up to \$91 million, across and flowing the other way there's a balancing figure as well, and - - -

25

I'm sorry, you're right?--- - - - and the end of the gentlemen's agreement was actually a benefit in my view.

30

Well, let's talk about that?---Yeah.

You see, what you're talking about is flowing one way and the other. You're meaning between the states?---Correct.

35

Okay. I'm meaning between the company and Queensland Racing, you see?---Right.

I'm sorry, we were across purposes. So I accept immediately that if you think about everything in Queensland like the TAB and Racing Queensland, and Queensland Racing, as Queenslanders I can see that information would flow south and we charge for it and New South Wales the other way, but here we have a complication, and the complication is that one of the Queenslanders, Tatts, is getting charged in – by the New South Wales people. Queensland Racing isn't, just Tatts?---Yep.

40

And Tatts wants to pass it on to Queensland Racing, you see?---Yes.

45

And it's that question that's really important: 500,000 a month?---Yes.

Because – anyway, you’ve got it, right? You understand what I’m saying?---I understand. I would like to think I understand the issue.

5 Okay?---The opportunity of the gentlemen’s agreement ending was something that, for example, [indistinct] and I disagreed fundamentally upon, as with many other things. For the old – I was going to say dinosaurs. Forgive me; I’m a dinosaur myself – but for the older generation of racing people who are very lazy the idea of being able to share this information was very attractive.

10 Yep?---What it did, however, it meant that if you actually bred better horses, had better horse racing, and had larger populations, then you could actually make Queensland a net exporter of product - - -

15 I’ve got it?--- - - -And in fact we achieved that, with the result being that the issue you’re talking about, Mr Bell, is that the – we became a net beneficiary - - -

20 I’ve got you?--- - - - but let me tell you, wouldn’t you say, the main issue about this was the corporates. It wasn’t about double-dipping of anything to do with Tattersalls, it was about trying to defeat the corporates who were not – who were back in the old days, not spending any money at all on buying the product.

25 I’ve got it. I know it, because your point is, when you’re talking about the race field legislation, there were people conducting wagering businesses on the internet, competing with Tatts, but not contributing to the industry?---That’s correct.

Yeah, and that’s point?---And the result being that because they could offer greater odds because they weren’t paying a product fee - - -

30 Yeah, exactly?--- - - - the greater odds mean more and more people are flooding to them - - -

Yeah?--- - - - with a cycle, which meant that less and less money was going towards Tattersalls, exacerbated by the fact that Tattersalls legally must take any bet.

35 I understand?---Whereas those who are betting on the internet, if you won, you were closed down.

40 Okay?---So, successfully, that puts you back into UNiTAB, which means that there is even more money in this cycle, so - - -

45 Okay. You’ve absolutely floored me with your argument I’ve got to tell you, because I really have to tell you my argument so that you address it. You see, the relationship between Tatts – if I can call it with that broad language in our discussion – the relationship between Tatts and Queensland Racing and harness racing and greyhounds and Product Co for them was regulated by what was written in a document called the Product and Program Agreement, wasn’t it?---Yes, it was.

Okay. Now, that document regulates whether or not Tatts have to pay part of their revenue to Queensland Racing?---Yes.

5 And it also regulates, does it not, whether they can deduct charges that they're starting to be charged by New South Wales?---That's correct.

Okay. So it's really about that document that we've got to go to at the end of the day, isn't it?---Yes.

10 Okay. Now, when we go to the document, the document isn't a story that anybody interprets their own way. The only significance of it, don't you agree, is of legal significance?---It's a legal document, yes.

15 Well, the word legal document, but the significance of it being a legal document is so it's to provide for what will happen in the future if something happens- -?---Yes.

- - - if a third party charge, for example, accrues?---Yes.

20 Okay. So if it's a legal document, it means it's serious in the sense that if something big like charges of \$500,000 a month arises you look at the document and you think how will the court deal with this? That's the really relevant question, isn't it?---Well, it was a surprise. I always understood and knew this would – this charge would take place. At the time, the judge was agreed it was going to break down.

25 Well, that might be all very well, but my point is when it gets – the first charge arrives on the doorstep of Queensland Racing and Product Co and harness and so on it looks at it and goes my God that's \$500,000 they're charging it. This is a legal document. Shouldn't I look at what the court is going to say about what should happen here? Isn't that a relevant question?---Well, I think it's a relevant question,
30 but the answer, of course, is that the formula was actually – is actually the document, so the charges that were going to be made against Racing Queensland were no surprise. If you look at the TAB turnover - - -

35 Yeah, I'm not worried about the charges, I'm just worried about whose – whether or not they're entitled to deduct against Racing – Queensland Racing, you see, and Product Co. That's the question, isn't it?---Yes. The agreement allows for the deductions to take place at UNiTAB before they reach Racing Queensland, yes.

40 Yeah, and then whether Racing Queensland has to put up with them being deducted from their revenue depends on the legal question, doesn't it?---Correct.

45 Okay. So if it's a legal question why am I getting a advertising guy to look at that question instead of a legal guy, I mean. They're all good for their own area, but why am I asking a – somebody who looks after children brilliantly, for example? They're a good person and they're valuable, but why would I ask them?---Well, I was only one person of the four who didn't want to proceed. Certainly, the influence that Mr Lette had was significant.

5 Yes?---As somebody who actually was there; a very significant practitioner. I think Mr Andrews called him the top end of town, and he was also very important in the advice, and if I might say as well, this document of Mr Grace's was passed on to obviously the greyhound board and also on to the harness board.

10 Yep?---The greyhound board has Mr Burn QC on its board, and [indistinct] I believe it had. There are a lot of other legal people who would have touched David Grace's advice in this process.

15 But you see, the thing about that is – the danger, I'm suggesting to you, about that is if you speak to a lawyer in the street and you say, "Well, what do you think is the right construction?", he doesn't really care because he's not been asked by Tatts or, on the other hand, Queensland Racing or, on the other hand, Harness, because they all might have different instructions going to him. They might all have different interests. See, for example, Tatts are going to tell you day and night, "We can charge this," but whether or not they can, isn't that the court's decision? Don't you want to know from a lawyer, Mr Hanmer?---We always had the option of going back to seeing a lawyer after we explored the best – the best advantage to go and see the Racing Office to find out what their position was. May I make a point there as well, by the way - - -

20 Please?--- - - - which was that I think – again, I agree with you. The optics of the advice are very important. I was not - - -

25 COMMISSIONER WHITE: What does that mean, "the optics of the advice", Mr Hanmer?---How – sorry, Commissioner. How the advice is actually given when I brief you on what my – believe my situation is. So when the brief was given and who the brief was given to by Grace, I think, is – is significant.

30 All right. Thank you.

MR BELL: See, I'll tip you off on something, Mr Hanmer. There's a lot of lawyers in the room here and maybe it's our problem, but when lawyers have a legal document there's legal training that goes into helping us interpret the thing so that we're all – we all learn the same education so we can – we barristers and solicitors can predict how the court will do it, hopefully; we get it wrong. But if we – if there's a fight – if there's two different views, you go to court and the court decides and it's all clean. And the community has a system – you know that – of having the court determine hard legal questions. Am I right?---You're right, of course. Yes.

40 Okay. But when you have a hard legal question, you don't get an advertising guy, with respect to you, or you don't get a – somebody else to decide it, do you? It's just sort of crazy stuff?---Well, I was one of a board of five who – four – made the decision simply to go and talk to the Racing Office.

45 Okay. But my point is you were driven, to some extent at least, by your own personal view of what this agreement meant?---Well, you're correct, of course. As a

5 director, your role is to obtain information, formal and informally, and come to a
view, a decision. And the decision I made was that I felt that Mr Grace's advice was
lacking in many ways. I may also say that in speaking to UNiTAB, I was also very
aware that – in the knowledge, of course, that this so-called gentlemen's agreement
would actually end – that they had formulated the – they'd formulated the Product
Program Agreement in the certain knowledge it would be challenged. Now, I'm not
going to believe what they say, obviously, for obvious reasons. But nonetheless they
were all part of the weight that begins to make up a mercable decision as to say look,
actually this advice is – is incorrect. Let's put it to the board – which was all I did.
10 The board made a determination; that determination was, initially, let's go to the
Racing Office. If the board has said to me get legal advice, get more legal advice, I
would've been honour-bound to have done it.

15 Okay. Let me ask you this, then. You just said, "Get legal advice or get more legal
advice". We had legal advice, didn't we?---Yes. We did.

Okay. Why would we want more?---Because there was some doubt as to the validity
of the entirety of Mr Grace's advice.

20 Okay. So if you start with one legal advice and you've got doubt about it, who do
you go to?---Well, you go to another lawyer.

25 Perfect. And you see, before you go to a lawyer in a serious professional way, you
go – don't you go along and say, "I'm going to pay you to give me advice about
this"? Don't you?---Yes. You do.

You don't just ask him in the street because you know him?---Yes. You do.

30 Because that's really serious, you see, because this is a big thing. I'm not sure
whether you're being serious with me, honestly, about this proposition that members
of the board are entitled to make their own judgment about the proper construction of
the legal document and vote in accordance with their own interpretation. Are you
really serious about that?---Yes.

35 Okay. Well, it makes me understand much better, I must say, what happened here.
But there were other people who disagreed with you about that, in the sense that
other members of the Product Co board, over time, felt that because there was
already legal advice available, we should do something about that legal advice:
either get another advice or take the position that Mr Grace had said, rather than
40 making up our own mind it was different. You know what I mean? They did that,
didn't they, during that period in 2009?---In the discussions, by and large, four went
one way; two went the other. But the two who – we'll call it disagreed for the sake
of argument – could at any time have said we want the board to get additional advice.
They could have passed - - -

45 I think they did. I'm going to show you they did. You know they did?---They
passed the motions.

You know what I'm – they can't pass them if they get outvoted all the time, you see. That's the point, isn't it?---Well, they can. They - - -

5 How? How would they do that?---Well, because they can – they can simply write a letter and say they demand a new – a new meeting, emergency meeting.

I thought they did. I thought Mr Lambert did do everything to try and get you to say, "Well, hold on. There's no skin off our nose, except the cost of the legal advice, to get another one from a barrister, a senior one." You know he said that?---He – yes. He did.

Okay?---He had an opinion. Yes. Yes.

15 Why didn't we do that?---He was one of five or six directors.

Well, there you go, you see. So if there's four who are advertising people and they think, "I don't like that advice," they just keep voting against going with it. That's what you think is right, don't you?---Well, the board of Product Co had to work on a consensus or on a majority decision, and it did.

20 You see, Mr Hanmer, it's really important that I suggest to you that what you're saying, I suggest, would amount to a breach of your duty to the company. Because you're legally obliged to act in the best interests of the company and when it comes to a legal document that is going to regulate whether or not \$500,000 a month can be charged to a company, it doesn't get more pointed that you should – in the best interests you're representing – ensure that you act on legal advice you've got or get more. See what I mean?---I understand what you're saying. Yes.

30 Yeah. And it just beggars belief that you think you were entitled to do nothing, meaning, after having Grace's advice in your head, just forget about it or, when people from the board said, "We should get a QCs advice or somebody who's really liable," and just say, "No. We're not going to." That's just breaching your duties?---I think that construct's wrong, counsellor, because - - -

35 Okay?--- - - - I didn't ignore it – and we'll come to this, I'm sure, but - - -

Yes?--- - - - subsequently and later on, other legal advice was obtained in the course of the process. The purpose of the initial approach of Product Co was to obtain money from the corporates, who were not paying anything.

40 No. We agree on that?---We could always go retrospectively back to September '08 - - -

45 Yep?--- - - - with UNiTAB at some time in the future. That was – that was always available for us. In fact, I – I don't know what's happened up until now. I don't – I gather the money has not been collected in spite of Product Co being under a different chairmanship for the last 20 or so months.

Does that prove the point that you guys were right all the time?---It doesn't prove anything. It simply proves the money has not been gathered.

5 So what – so why did you say it? I'm just trying to work out – what are you telling me? Should I take it that because the new board didn't do anything, that justifies you doing nothing? Is that what you're saying?---Well, no. It – it could well be that perhaps a decision that those four people made, the majority, may have been correct.

10 But correct in what sense, my friend? Please, what sense do you mean? You mean what the court would have done or do you mean as good thing to do or – what do you mean?---Correct in that – correct in that their interpretation of Mr Grace's advice was not correct. But I can't speak on behalf of them, only myself.

15 But how can you be correct unless it is tested in the court? Please tell me. How can it be correct or not correct? I don't get it?---But there's a whole process before going to court anyway. There was a reconciliation process - - -

Okay. What is the process?--- - - - to have gone through.

20 What's the pre-court process?---The pre-court process is – is a reconciliation meeting, first of all. There's a – there's a junction you can take. The junction is you can actually go to a reconciliation meeting with UNiTAB or you can try and find out more about what the intent of this was, which is why the determination was made by the others to go to the Racing Office and find out what [indistinct] was.

25 Let me tell you something. Let me tell you something on the - - -?---If I may just say – sorry.

30 Yes, please. Go?---That was that – everybody wanted to do that. The two so-called dissenting directors - - -

Okay?--- - - - agreed. They passed the motion to actually go to – to the Racing Office to find out what the intention was.

35 Yeah. They did. Yeah. And we'll come to it, but you remember that the letter from the Racing Office said, "Go and get your own legal advice"?---Well, that was much, much later on.

40 Well, even so?---It was much later on.

Even so, did you go and get legal advice then?---It had then – at that time, which I think was about September '09 - - -

45 Yeah?--- - - - it had moved away from Product Co into where it should have correctly been all the time, into Racing Queensland.

Well, so what?---And at that time - - -

What does that mean?---Well, what it means - - -

So then did it just disappear into the ether?---No. No. At that time legal advice was taken. I know of at least three - - -

5

Who from?---David Jackson was consulted. David Jackson QC in Sydney was - - -

No. He didn't give any advice about this question, Mr Hanmer. That's - - -?---Well, I - - -

10

That's not right?---And Declan Kelly as well.

He didn't give any advice about this question, Mr Hanmer?---Well, I understand from Shara Reid that Declan Kelly was specifically asked into finding what the implications were of David Grace's letter.

15

Fantastic. It's so important, but until today I haven't seen that, you see, and I've never heard of it before. But until the day that was obtained, why all the resistance to going to Declan Kelly? I don't get it?---Well, there was - there was no resistance.

20

The board was following the process - - -

I see?--- - - - of the other directors.

Okay. Anyway, let's see if we can agree on some things. You accept, don't you, that the Product and Program Agreement was entered into in 1999 between Tatts - - -?---It was July '99, I think.

25

Yeah?---Yes. Yep.

30

Between Tatts and Product Co, as agent for the three codes' control body?---Correct.

Okay. And it regulated their relationship in terms of business, didn't it?---As agents. Yes. Yes. Yep.

35

Yeah. And then after that what happened was an unexpected thing came up in 2008, namely, race fields legislation. Nobody had anticipated that the New South Wales Government and the Victorian Government and eventually the Queensland Government would bring New - race fields legislation?---Yes. It had - it had - - -

40

Because if they had, they would have catered for it in the agreement in 1999?---With respect, it had always been anticipated, as I mentioned earlier.

Okay?---Going back to racing - racing [indistinct] conferences.

45

Okay. But in the agreement was it catered for?---I believe it was - - -

Okay?--- - - - by that clause 10(c). Yes.

Race fields legislation?---Not the words race field legislation - - -

Okay?--- - - - but the – so it could carve out the – the payment of rights to the various states was always anticipated.

5

Okay?---That was embodied into a thing called the racing information legislation.

Okay. Well, we've got to go and have a look at what you're talking about?---Yep.

10 So could Mr Hanmer see the Product and Program Agreement, please, and that appears, for those who need to look, at my folder 1 at document 175, please.

15 You tell me if you'd like me to help you there to get to the right place. Were you talking about clause 10.2? You take me where you want to go?---Could we go to recitals.

Yes, of course. They're at the front?---That's on page 1. Yes.

20 Yep. Could we go to (b).

(b), did you say?---Yes.

(b). Yes?---Product Co has agreed to supply - - -

25 Yes?--- - - - the Australian Racing Product - - -

Yes?--- - - - Queensland Racing calendar and Queensland Racing program for use - - -

30 Yes?--- - - - by TABQ, its race wagering business on the terms of this agreement.

Okay?---So the words supply and use are linked in that particular - - -

35 Yes?--- - - - recital.

You're right. Okay. And you were referring to – you see, the preambles are not the obligations of the parties. It's just setting the framework, you see, setting the background?---Yes.

40 So this is how – I'm talking lawyer talk now, but my point is what each party's obligation is in the – what comes next?---Yes.

Okay. You take me – do you want to take me anywhere else in this document?---No. No. Please.

45

Beg your pardon?---No. Please.

Okay. So I hear you say recital (b) covers the position. People were thinking there that when race fields legislation comes in, you go to recital (b) and that tells you they always thought it would be catered for in here?---I'm obviously not a lawyer, but it read to me that Mr Grace was saying there was a disconnect between supply and use.

5

Yeah. He was?---But the recital clearly doesn't say that.

Okay?---The recital clearly does the reverse of Mr Grace's advice, which – it links the two, which it says agree to supply the program for use by.

10

Yes. I see. Is there anywhere else in the agreement that you can recall was very important in relation to this question? For example, I heard you say 10; I was going to flick over to 10, because in 10.2 - - -?---10.2 Deductions. Yes.

15

“Deductions”?---Yeah.

And then were you going to refer me to (c), the third party charge? Is that the one?---I was. Yes.

20

Okay. And then if I look at what a third party charge is, I go back to page 6 earlier on, and it defines what a third party charge is?---Which – page 7 of which section?

Page 6, please?---Oh, yes. Yes.

25

It's about three quarter of the way down - - -?---Yes. It is.

- - - third party charge. Okay. Okay?---Yeah.

30

So they can deduct if what happens is they pay a charge to obtain. Wouldn't you agree with that?---Yes.

Okay. “Obtain” – what does that mean, in your judgment?---Acquire.

35

Okay. Acquire the supply, wouldn't you think?---Yep.

Okay. And then in the next line, “incurred by TABQ in procuring” – “procuring” means getting, doesn't it?---Purchasing. Yes. Yeah.

40

Yeah. So how does that have any relevance to the race fields legislation? Because as you know – I'll show you the legislation that we're talking about.

Could you help Mr Hanmer go to document 37, please, in folder 3, please. Just don't take that agreement away, please. This is the legislation New South Wales brought in - - -?---Yes.

45

- - - in 2008 in about July. 1st of July it became current. You see what I mean? Okay. And what it said at this time – which was changed about six months later – but what it said in 33A(1) - - -?---Is authorised?

5 No. In (1) it says, you see, “to a person to publish a New South Wales race field”. So what it says is “in New South Wales may grant approval to a person to publish a New South Wales race field”. Do you see that, “to publish”?---Publication of New South Wales race field restricted – 33?

10 33A do you have there?---Yes. Yes.

Okay. Yep?---Beneath it – yes. Yep.

15 Okay. 33A, that’s with the uppercase A, in (1): “The relevant racing control body in relation to an intended race to be held at any race meeting on a licensed racecourse in New South Wales may grant approval to a person to publish” – see that?---Yes.

20 Okay. So what that means is, doesn’t it, that if a person wishes in their wagering operation to publish, meaning to tell people - - -?---Yep.

- - - then they’ve got to go and get approval for it, and that means pay a fee. See what I mean?---Yes. I believe this was the actual subject of major litigation or legislation - - -

25 Yeah?--- - - - a major – major court case between Betfair, Sportingbet - - -

Yeah. Well, that was about something else. That was constitutional law?---Yes.

30 Well, we don’t need to worry ourselves with that today?---Okay.

But anyway, you see what I mean? What Grace was talking about, which you’re on to, is that the legislation in New South Wales at least was talking about a fee to publish?---Yes.

35 Okay?---Yes.

Our third party charge was a different thing, I suggest to you. It was to obtain. See what I mean? That’s why at least he held a view that was different to your view, because of that distinction. See what I mean?---Yes. Yeah.

40 Okay. Now that you see that, what do you think about that?---Certainly there’s a – it’s an interesting issue. Yes. Yes.

45 Okay. And then what happened in New South Wales was – what happened was in New South Wales – if you keep your eye on 33A. By December, like in many of the other states, the word “publish” there – you see in the third line I was showing you before? 33A(1)?---Yep.

Okay. They changed the word “to publish” to the word “to use” – u-s-e - use?---Yes. Yes.

5 Okay. Yeah. So that would mean once you’ve got it, that is, the race fields legislation from New South Wales – to use it – you can have it and if you’re a punter yourself you can use it all you like, but if you’re a wagering operator you’ve got to pay to use it. See what I mean?---I see the distinction. Yes. Yes. Yeah.

10 Right. But the distinction is one thing and I’m with you, maybe the point is – I might be wrong. I don’t think I’m wrong and you might be right, but the question is, when the first invoice arrives from Tatts and they’re deducting \$500,000 in circumstances where at least one lawyer, Mr Grace, is saying, okay, I can’t do that, a duty arises, I suggest to you, Mr Hanmer, to do something about it. See what I mean? And nothing was done here, except to squabble over whether or not anything would be
15 done?---Well, I disagree with the last part.

Okay?---Something was – something was done.

20 Okay?---And the – the – the board made a determination to seek further clarification from the Racing office.

Okay. Well, we better - - -?---That was all six directors.

25 COMMISSIONER WHITE: Why would you go to the Office of Racing who really wasn’t a party to the agreement?---Because – well, Commissioner, because I understood that the Office of Racing were the instigators of the process, understood the intent behind this and were part of the negotiating process for the originating TABQ when it was privatised back in ’99.

30 MR BELL: You see - - -

WITNESS: Because this is part of the whole privatisation process.

35 MR BELL: Let’s accept what you say is exactly right. Let’s accept that, so that means what you do is – your approach – the approach of the board was to go back to the people who were involved and say what did you mean, doesn’t it?---We were simply endeavouring to find out what – exactly what happened before committing further.

40 Well, that’s what I mean. What happened, meaning what did you mean at the time that you guys wrote this thing?---Yes. Yes.

45 Okay. But it was them who wrote it, you see. See, both sides write it. Tatts writes it and Product Co writes it. Do you see what I mean? So it might be that they have different views about it?---Well, all I can say – that was the determination of the – of the board.

5 Okay. But you take – you must take some responsibility for it because that approach was your approach. That’s the one you advanced, wasn’t it?---Well, I – the advice was given to all the directors, given to all the board. They all made their individual determinations. They couldn’t be driven or coalesced by me in any way at all and four quite clearly wanted to go one direction and two others – actually, one of them, Mr Lambert, actually, the – the – the [indistinct] to wanted to go in a different direction.

10 Okay. well, you see the point of me asking you these questions is that might’ve been what happened, but it might also have been a breach of their duty to the company to do that because it was so outside the realm of sensible to be silly, to be negligent?---I’m surprised Mr Lette, as a director, would’ve countenanced that approach.

15 Well, I’m with you. I’m with you. Completely with you, 100 per cent?---In fact, I received a phone call from Mr Lette before the board meeting which was quite unsolicited and - - -

20 We’ll go to that. I know. And you kept a record on your telephone of his message, didn’t you?---Yes. I had a – a telephone [indistinct].

And then you had it – you had it sent to Shara and she had it written up?---Yes. Correct.

25 And then later on you brought it out. We’ll come to that?---Yep.

That’s really good?---Yep.

30 Did you ask anybody else, like your wife – what she thought the agreement meant?---You haven’t – you haven’t met my wife, Mr Bell.

Okay. Did you ask anybody else who wasn’t on the board what they meant?---No.

35 What it meant?---No. It – the note was – the circumstances of receiving the note – are you going to go into that later?

Yes?---Okay.

40 Okay?---Well – well, I received the note in strange circumstances and it was then circulated to all the board members. I felt it very important the board members actually reviewed the note before coming to the board meeting.

45 Okay?---But was it circulated to anybody else? In turn it would’ve been, of course, and it would’ve been circulated to the harness and greyhound board members as well, of course.

You see, just to finish, before we go to the history of what happened - - -?---Yep.

5 - - - the difficult that somebody might have with what you've said so far about all this is that a serious issue of law arose here for the board of Product Co – a serious issue of law – and the board of Product Co had a legal advice saying Tatts can't charge this and yet, they allowed Tatts to charge it; you know what I mean? And a view might be taken of that that that was not in the best interests of Queensland Racing nor harness racing nor greyhound racing, you see? And, in particular, because this was other people's – stakeholder's in the industries' interests, so it wasn't like you were just talking about your own stuff – your own business, where you are entitled to make your own decision. This was talking about the horse
10 trainers who were waiting for prize money and so on, and so it was a big responsibility, don't you think?---It certainly was. Yes.

15 Okay. Well, with the big responsibility, when you have a legal advice saying they can't charge that 500 a month – pretty serious, wouldn't you think? Did you take it seriously?---If I felt that the charge was wrong, of course. Yes. And I'm presuming the – the other members who felt the same way. Yes.

20 COMMISSIONER WHITE: But why do you use the word "feeling". This isn't about feelings, Mr Hanmer?---No. A bad choice of words, Commissioner.

This is so plainly technical construction of a document, a contract, an agreement. I'm surprised to hear this kind of evidence coming from a man of great experience in the commercial world?---It was my feeling at the time, Commissioner.

25 MR BELL: But you're back to feeling, you say – you said feeling again, "That was my feeling". Well, I've got a feeling too - - -?---That was my conviction.

30 Yeah. Conviction. And your conviction was reached against legal advice?---I felt Mr Grace's advice, and I've explained why, and so did three other members of the board, was wanting.

Yep. See, anyway, we know that Mr Grace was paid quite a bit of money to give advice to Queensland Racing, don't we?---Yes.

35 And we heard from Mr Bentley – and I just want to ask you whether this is your recollection or not – Product Co didn't have its own funds; it just collected money for the three codes – controlling bodies, didn't it?---Correct.

40 If it – that is, Product Co board – wished to obtain legal advice, it would need to ask a – or the three codes or two of the codes for funds to do it?---Correct.

Okay. And if it had asked for funds to get legal advice, generally it would happen?---Again, with respect, no. It was - - -

45 Well, let me tell you what I mean?---Okay.

The only bloke missing from Queensland Racing is Bentley. He's got a conflict, so we don't worry about him, do we?---No.

5 So the same fellows are sitting there on the board saying we want to get legal advice, so it's a game to say, isn't it, that they couldn't have got the money if they wanted to, to get a legal advice, Mr Hanmer? It's a game?---At the time, I was getting money for a new – constitutional changes. It was exceptionally difficult to get money for those issues, mainly because the company had come out of the eye, money was
10 actually very tight and the harness and greyhound boards were reluctant to supply any of the funds for RQ, which hadn't mattered up until that time because there'd been little funding ever required. It was a pass-through company, but for the first time money was going to be needed for – for legal assistance, like, for example, constitution. It was exceptionally hard and actually RQ ended up paying in the end.

15 [indistinct].

COMMISSIONER WHITE: Well, if Mr Grace was right, you're going to have a great deal more money to play with?---Yes.

20 MR BELL: A great deal more – 91 million more over the period when you were the chairman - \$91 million – 91 million?---I think you must offset the money from the other side and also the corporates against that, Mr Grace.

No. I don't need to do that?---Okay.

25 You see, because I'm talking between the deductions made by Tatts, you see, during the period?---That's correct. Yes.

Tatts?---Yep.

30 I'm not talking about New South Wales, as opposed Queensland?---No. No.

So - - -?---That's one side of the ledger. You're correct.

35 Yeah. I'm talking about the fact that Tatts was charging all that money, you see?---Yes.

40 And what we're talking about here is everybody but Bentley, the chairman, is on the board of Product Co and if Product Co needs money it might just go to Queensland Racing, where all of you guys are on the board, so if you decided we need 25,000 to get legal advice or even 50,000 it would happen, wouldn't it? Just silly to say it wouldn't have, isn't it?---Yep.

45 Just a game, a silly game, to say that, I suggest to you, isn't it?---In practical terms, it was exceptionally hard.

Honestly, Mr Hanmer, you saying that makes me very concerned about the evidence you're giving. I'm having trouble believing that you're being straight up and down, meaning being honest about this. How could you say that?---Counsel, I'm under oath. It's very serious for me.

5

You are under oath. And to say – when you've got every single member of the board of Queensland Racing except Mr Bentley on the board of Product Co, if they had said, "We need some money to get legal advice" – that it wouldn't have happened – I just don't get how you can say that?---Mr Lambert opined it was going to be \$5000.
10 It was going to be nearer 50-plus thousand dollars.

Let's say 100 to test it. Let's say 100. "We got 100 in 2008 to change the term that you would be a director. We got that money from David Jackson, the constitutional lawyer in Sydney, but we couldn't get it for 500,000 a month." You've got to be
15 kidding. You are kidding. Are you serious, Mr Hanmer? Honestly, are you serious in saying that on oath?---I'm very serious, Mr Bell, very serious, yes.

Okay. So make the distinction for me. What was so important about you extending your term as a director with the other guys and getting rid of the independent
20 selection process for new directors compared with this question?---I don't understand the issue about the change of directors. What's - - -

Okay. Let me tell you. Let me tell you so you do know. In 2008 - - -?---Yep.

25 - - - a motion was put to the members of Queensland Racing to change its constitution?---This is the A-class or B-class members?

All members?---As and B. Okay. Right. Yeah, yeah.

30 To change the constitution, you needed all members?---Right.

And Queensland Racing decided, "We'll get QC's advice, the best constitutional lawyer in Australia, David Jackson, and we'll show all the members his advice,"
35 because the changes in the constitution would mean that you and Mr Bentley and the others would have a longer term if the changes happened, and (2) the independent recruitment agent would no longer have a role when you guys were to terminate. You see? They were the two questions, and when those questions arose, hands went up. "Let's spend the money. Let's spend the stakeholders' money on that with Mr Jackson from Sydney, but we're not going to do it on the 500,000 a month."
40 Mr Hanmer, give me a break. This is silly?---But your half – your opinion about the half a million dollars, Mr Bell, was always an understanding. There was nothing – there was no surprise about the end of the gentlemen's agreement.

45 Forget about that. I'm talking about the money for legal advice?---I was on the half a million dollars. You're saying the surprise of that – there was no surprise about that.

You come back to the money on the legal advice?---It was always going to happen.

Mr Hanmer, come back to the money on the legal advice. I'm trying to show you when you wanted it in 2008 to extend your term, no problem, no problem. Queensland Racing. Hands go up. But here now, when \$500,000 is on the line, hands are down in the pockets. Why?---I didn't see - - -

5

It's crazy stuff?---I didn't see the bill from Jackson.

Mr Hanmer, honestly?---I didn't see the bill from Jackson. Why would I see the bill from Jackson?

10

You even said - - -?---52,000.

- - - to Mr Lambert when he was putting up, getting a QC's advice, "It's so expensive. Look what we paid for Jackson"?---52.

15

You knew all about it?---52. You said 100 just now.

God.

20

COMMISSIONER WHITE: That was a slip of the tongue?---Commissioner, sorry, what's - 52. I knew it was 52, not 100. There's a huge difference.

MR BELL: Okay. Okay. Anyway, could Mr Hanmer see tab 98, please.

25

Have you got the document behind tab 98 please, Mr Hanmer?---99?

No. I'll get the right one. I'll get somebody to help you. Okay. You're opened at 98? Okay. Good. If you look at this, please, you'll see that this is an email from you to Mr Lambert on the 14th of December 2008. Do you see that?---Yes, yes.

30

Okay. Do you mind going down to the second-last paragraph, please. See where I'm referring to?---Yep.

35

It starts "Again, I am surprised and disappointed because the advice to date from Cooper Grace Ward has cost a shade under 9000. If we were to proceed with this adventure, we would need to obtain the very best advice, knowing that UNiTAB would defend this issue vigorously. So I would suggest that we would go to Jackson, who provided our constitutional advice at a cost of 52,000 to QR," a long way from your modest 5000. "But, never being a person closed to an argument, and because naturally you feel so strongly about this, we will again table the matter at the next Product Co meeting." So you were very conscious that Mr Jackson was retained to extend your term and to get rid of the independent recruitment agent, weren't you? That's what he spent that money - that's what you spent that money on, see?---Correct.

45

Okay. But when it came to this question, you were arguing the toss about how much it would cost because if you went to Jackson it would be another 52?---But this also shows that I wasn't closed mind to legal advice.

5 Forget about that. Forget about that?---Well, I don't think you can - - -

Just focus. You focus on my question, and it will be a lot quicker. My question is this: how could you judge cost to be an issue in relation to \$500,000 a month when it was no issue to lengthen your term? Tell me, please?---I don't understand the linkage with lengthening our term, frankly, counsel, but - - -

10

Okay. I'll tell you, because we're not going to run away from this until I get a straight answer on this?---No. Sure.

15 You voted in favour of spending money with Jackson QC and others which amounted to \$52,000 of Queensland Racing's money. You remember that?---Yes.

Okay. You've even recorded it there?---Yes.

20 That was about changing the constitution of Queensland Racing?---Yes.

Okay. Another legal issue arose, which you were dealing with in this email. This legal issue had a consequence of \$500,000 a month for Queensland Racing, harness racing and greyhound racing. See what I mean?---Yep.

25

Now, where it was such a big question, why was the cost relevant when it hadn't been relevant in 2008?---But, counsel, I say so I would suggest that we would go, and you're saying I have a closed mind about any further legal action or legal - I'm suggesting - - -

30

No, no. Mr Hanmer, why are you mentioning the cost is my point?---Well, because Mr - Mr Lambert initially suggested a modest \$5000.

Okay. So he says five and he's wrong, but who cares? Why do you care? Why are you pointing out this? Your point is to argue back and say, "Don't say 5000. It's, in fact, 52,000." My question to you is when it's 52,000 - it's going to be \$500,000 a month cost. What do you care? This is crazy, Mr Hanmer. You know it is. I think you do. If you can't see that's crazy, tell me?---I'm saying in that paragraph quite clearly - - -

40

Forget about the paragraph. Address my point. Address my point.

COMMISSIONER WHITE: I think you might perhaps just let Mr Hanmer answer the question.

45

MR BELL: I'm sorry, Mr Hanmer. You go ahead?---The point I was going to make was that penultimate paragraph say two things. First of all, my mind is far from

closed about going to anybody, Jackson, and having legal advice. The cost is immaterial. That's what I'm saying. It doesn't matter what it costs.

5 Okay, okay. I've got it?---Let's go – sorry?

Right. So cost wasn't immaterial to get advice – ever; is that right?---I hadn't finished, but carry on.

10 Well, before – you see, why I got to this was you said to me before – when I said there wouldn't be a problem getting the money, you said, "Hold on. It was tough to get the money," didn't you?---Yes. It was.

That's why I'm on this, you see?---Yeah.

15 Now I get to it, you say the money is not a problem?---I say here I would suggest we would go to Jackson. Now, what I'm saying is that we would go to the board, we'd make – whatever requirements required to the board of RQ to get them to go to Jackson. I'm saying – you've said – you suggested earlier I had a closed mind about going and getting legal advice. This letter says quite clearly I didn't. I would
20 suggest that we would go to Jackson. That's hardly a closed mind, sir.

Let's go back now. Let's go back to what we were talking about. I said to you earlier if the Product Co board, which is all the board of QRL and more, wanted money to get legal advice, they'd put their hand up and go "Yes, let's get it." And
25 they would go to the board of Queensland Racing, and they'd still put their hand up. And they'd still win, and they'd have the money. That's right, isn't it?---We – in this situation, we would have to have agreed with the two other codes that they took 24 per cent of the cost or the upside or the downside.

30 You're joking?---Sorry?

You're joking?---I'm not. Why would we carry 24 per cent of their liability?

35 What is 24 per cent of \$50,000, about?---\$12,000.

Okay. So we're arguing about \$12,000 when we're getting charged \$500,000 a month?---No, but it wouldn't end there because if it went further, whatever the end result would – whatever the end result was would be 24 per cent of the entire costs or 24 per cent of the benefit. They had to carry their part of the burden.

40 Yeah?---It wasn't just about Racing Queensland, it was about the three codes.

I've got it. I've got it. Don't worry?---Three code organisation. It's a shared responsibility.

45

So if they were silly and said, we're not putting in our \$12,000, the consequence would be Queensland Racing would say, okay damn, we're not going to go and get legal advice?---That never occurred. There would be a major - - -

5 No. Don't run away from it. That's what you're telling me, aren't you?---The – sorry, repeat the question?

Mr Hanmer, that's what you're telling me, aren't you?---Repeat the question?

10 Yes. If they were silly and said, no we're not putting in our \$12,000. That means that Queensland Racing would say, oh okay, well we won't go and get legal advice?---I take the board's advice. I can't respond to how - - -

No. You're not going to address my question, are you?---Well, I will.

15 Okay. Here's the question again. You're telling me that if you couldn't get greyhound and harness to agree to contribute their \$12,000 to getting legal advice, Queensland Racing wouldn't contribute it either?---I'm saying that the contribution of whatever occurred – the 24 per cent would have be on the greyhounds and the
20 harness as well as the thoroughbreds. Anything had to be in concert. That was the idea, as you said earlier, of Product Co. It was the three codes together. Harness could always have gone and got their advice themselves. Greyhounds could have got advice themselves if they'd so chosen. Their boards could have done. Their boards had many legal people that at any one time any of these people could have got legal
25 advice. They were all in receipt of David Grace's advice. I do find that personalising it towards me is a little heroic, frankly.

Okay. I'm sorry.

30 COMMISSIONER WHITE: You were the chairman. I think perhaps chairs always have to carry a slightly greater burden than others, Mr Hanmer?---I think the expression, counsellor, is it equal – first amongst equals?

MR BELL: Yes.

35 COMMISSIONER WHITE: Sometimes.

MR BELL: Yes?---Or certainly the board.

40 Okay, could I - - -

COMMISSIONER WHITE: Could I – have you finished with that email, Mr Bell, or not? Because I would – I'm a bit interested in Mr Hanmer's explanation of the first paragraph and the second one-line paragraph if you've not.

45 MR BELL: Yes. Mr Hanmer, would you go to the first paragraph, please?--- [indistinct] paragraph? The very top one?

MR BELL: Yes, please.

COMMISSIONER WHITE: Yes. Yes, I'm particularly interested in the fairly technical approach that you seem to be taking to the origin of the advice – the letter of advice from Mr Grace?---Well, counsellor, I learnt the other day from the transcripts that there had been conversations with Mr Tuttle and with Mr Grace over the briefing of this particular document. The first time I ever saw the Grace letter, it was delivered to me at 7.30 in the morning at a meeting at the Sofitel Hotel. And I questioned at the time what the origins of this letter were because it was Product Co issues. I was the chairman of Product Co. Our corporate counsel, Sharee didn't appear to have been involved at all. Malcolm appeared to be – Mr Tuttle appeared to be the only person who had briefed this with Mr Grace. And I didn't understand, frankly, why with the background that I had in its actual issues that I hadn't been involved in the briefing. The first I heard of it, it was delivered to me and told this is in the board meeting. Hence, Mr Grace was briefed that any involvement by Product Co – any reference to Product Co. It was addressed to Queensland Racing and so I was disappointed and upset by the fact that this was – letter was produced without any involvement of me and just delivered summarily to me at 7.30 in the morning.

MR BELL: You see, I overlook that. I'll tell you why. In your statement which you swore for the commission, you said this, "I showed it – start from the beginning, "I became aware that QRL obtained a written advice from David Grace of Cooper Grace and Ward in November 2008 in relation to the draft Race Information Legislation. I showed a copy of that advice to the members of the board of Product Co. I wanted to discuss the advice with the board and to gauge their views to the draft legislation in relationship to their codes and the opinion of Mr Grace?---Yes.

So it wasn't any problem that it was addressed to this company over here or that one for the purpose of considering its content, was it?---Well, it – it referred to the whole industry.

Well, you didn't address my question?---Sorry.

You said here, "I showed a copy of that advice to the members of the board of Product Co. I wanted to discuss the advice." See the point?---Yeah, I think - - -

So who it was addressed to was irrelevant?---Yes.

Okay?---Yes.

So it never mattered that it wasn't obtained by Product Co because it was in Mr – in the board's head – the information in it was in their head?---Yes, absolutely, yes. Yeah, yeah.

So what's the point in the first paragraph of your email? What point are you making, please?---I don't – there's no point at all. It was always addressed to Racing Queensland. It made no difference if it was addressed to harness or – or dogs.

5 Okay. Okay. So why are you raising that point when you're talking to Mr Lambert about it? The Grace letter was briefed without any involvement by Product Co or any reference to Product Co. The letter is addressed to Queensland Racing and Mr Tuttle is not an officer of Product Co. The letter was written code-specific to thoroughbred. What's all that matter?---I – I – it has – it doesn't matter at all.

10 I thought you were having an exchange – a heated exchange with Mr Lambert about that?---No. I had enormous respect for Michael. Michael and I had regularly – we enjoy the English language and we – we had some quite interesting exchanges.

15 Okay. I'll just introduce you to the paragraph again, "Michael, I'm disappointed that you found my honest appraisal of the gross advice unpalatable. Taking the points in your note specifically, I disagree with you when you say the origins of the Grace advice are of no concern to you"?---Yes.

20 Okay. The Grace letter was briefed without any involvement by Product Co, the letter is addressed to Queensland Racing and Malcolm Tuttle is not an officer of Product Co. The letter was written code specific to thoroughbreds, a different outcome could be imagined if it was briefed by the other codes or Product Co?---Yeah.

25 See, I sort of don't understand all that stuff?---Well, look, it would've been better if I'd written at that particular time that I was not involved in the briefing as a director of Product Co.

Okay?---That would've been a better construction of those words.

30 Well, I think the crusher – the bone crusher to the argument is the next sentence, "If we all rushed off and sought advice on every issue, we would enjoy anarchy"; see that? See that – what you've written there?---Yep.

35 So that sounds like you're saying we can't go and get advice for Product Co because every time an issue arises, we go and get legal advice, we'd have anarchy. We can't have that. Is that what you're saying?---No. The point I'm making there is at least we should stick together and be advised to each other as to what we're doing and I think the statement there that if everybody did rush off in a company, which is a [indistinct] sense, we would enjoy anarchy, which we would. You – there has to be some – there has to be some cohesion in the way an organisation works.

40 I understand. I understand. But, anyway, once we - - -?---And may I just – excuse me. I interrupted you.

45 Yeah. Go on. Keep going?---In the letter that Michael wrote to me, he didn't actually say that he agreed with my interpretation of the Grace advice.

Anyway, the point is - - -?---[indistinct].

- - - we can hurdle the issue of who got it and how it came about, but the real point is the point of substance in it?---But, Mr Bell, he did actually say he agreed with my advice.

5 Yeah. That's right. He did. He said to you, I personally agree – Lambert did – but I'm not a lawyer?---No. I know, but – but, if I may, with respect - - -

Yeah. Yeah?---You made a point earlier that Mr Lambert was actually against what I'd said. That wasn't strictly true because he wrote later to say that actually he was
10 in agreement with me.

No, no. You're absolutely right, Mr Hanmer?---I'm not trying to complain, but it's quite important.

15 Yeah. He's an accountant, you're an advertising expert and he kept agitating, saying, hey, we've got to do something about this legal advice, even though I disagree as an accountant - - -?---Yep.

- - - and you disagree, like me, as an advertising guy, it's a legal question. That's
20 what he was saying?---Well, he's talking about process now, I think, because if he agrees with me as well, what he's saying is, look, we actually do all agree, but for process let's get advice.

Yeah. Fair enough. And you know what the process was, you see, one had to be
25 careful that we were doing the right thing because there was a lot of money on the line and we had a legal advice that said it shouldn't be being deduced; see the point?---I do, but we have come in the last hour, sir, from being a situation where Mr Lambert actually was very much against the position I'd taken, which I'd always
30 disagreed with because he did say on two occasions, I think December the 4th as well, that actually he agreed on one occasion with my layman's interpretation and, also, he agreed with – he agreed with the view that the board had. He did believe that we should get other legal advice, but it wasn't because of a disagreement over the process. He disagreed with Mr Grace's letter. It was more process about, rather, [indistinct] statement makes sense.
35

Let me ask you one last question before we break for the evening, all the resolutions in the world that happened at Product Co over this issue, did it ever result in Product Co getting clear legal advice that Tattersalls could make this charge – could, c-o-u-l-d, make this charge?---No.
40

Okay. So, therefore, in those circumstances, after all the work done we know Andrews and Lambert leave the board in December 2009. Did you, as chairman, put your hand up and say, well, you know, they had a point there. We really should settle this. We should get legal advice. Did you ever do that?---Before they left a series of circumstances occurred where the entire process was transferred to the
45 individual codes, so all of the race field information process left Product Co and went

to the Harness and the Thoroughbred board, for reasons I'm happy to – if you have the time, to explain.

5 Okay. But I'm asking you a different question?---Excuse me.

Did Product Co ever go and get its own legal advice?---Product Co never did. No. No.

10 No. And I suggest to you, Mr Hanmer, that you were motivated not to get any further legal advice?---Motivated by what?

By Mr Bentley, for example?---Oh, that's nonsense.

15 It's nonsense, is it? Well, the reasons you're giving so far don't make any sense to me. Think about it overnight and we'll talk about it tomorrow?---I had no – may I just make the point - - -

20 Please do?---The suggestion that Mr Bentley and I had any relationship is outrageous. I have never been to Mr Bentley's home. He's never been to my home. I've never had any social dealings with Mr Bentley.

You're joking. You're joking, Mr Hanmer. You've been on the board with him for how long?---Nine years.

25 2002 you sat on the board with him first, didn't you?---Correct. Correct.

And you're telling me you had no relationship?---I – a business relationship?

30 You went overseas with him, didn't you?---I went to a Cushion Track trip with him once.

Yes. And you met with him at the board meetings, didn't you?---Had board meetings with him, as a – I - - -

35 Yes. And you were appointed deputy chairman with his approval, weren't you?---Well, I'd like to think on merit. Yes. But can I repeat - - -

And you stayed on the board right through till 2012 with him, didn't you?---Yes. Correct.

40 Don't say you didn't have a relationship?---Mr Bell, I have friends, I have business acquaintances, I have relationships, I have mates. Mr Bentley's relationship was entirely appropriate with me. I find that, morally, quite offensive, by the way. As I
45 said, I have never seen Mr Bentley outside of business. He's never been to my home. I've never been to his home. I've never had any social interaction with Mr Bentley outside of a appropriate industry events.

Trust me, I'm talking about the relationship in relation to Queensland Racing, Mr Hanmer, nothing else?---In relationship to a business association, yes.

5 Yes. I'm talking about that relationship?---As fellow board members. Nothing else.

But, Mr Hanmer, any other relationship doesn't matter. I'm talking about the relationship in relation to the business of Queensland Racing and then Racing Queensland. That's what I'm talking about?---In an appropriate manner.

10 And you had a long relationship with him, didn't you?---Yeah. Nine and a half years.

Yeah. Yeah.

15 COMMISSIONER WHITE: 10 o'clock tomorrow, please.

**MATTER ADJOURNED at 4.37 pm UNTIL
THURSDAY, 25 SEPTEMBER 2013**

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