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## TRANSCRIPT OF PROCEEDINGS

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**THE HONOURABLE MARGARET WHITE AO, Commissioner**

**MR JC BELL QC, Counsel Assisting**

**MR T PINCUS, Counsel Assisting**

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

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

**QUEENSLAND RACING COMMISSION OF INQUIRY**

**BRISBANE**

**10.00 AM, THURSDAY, 3 OCTOBER 2013**

**Continued from 2.10.13**

**DAY 12**

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

**THE COMMISSION RESUMED**

[10.00 am]

5 COMMISSIONER WHITE: Mr Bell.

**MICHAEL ANTHONY KELLY, CONTINUING**

[10.00 am]

10 **EXAMINATION BY MR BELL**

MR BELL: Could Mr Kelly see the document behind tab 126, please. Folder 4, I'm told, please.

15 Mr Kelly, yesterday we were talking about this letter of the 6<sup>th</sup> of January 2010 that you wrote back to Mr Tuttle after he had requested information on the 23<sup>rd</sup> of July 2009. Do you recall us talking about that?---Yes, I do, Mr Bell.

20 By the time you wrote that letter, you appreciated that Mr Lambert and Mr Andrews were then off the board of Queensland Racing, didn't you? They went off in December 2009?---I would have been aware that, yes, they'd left.

25 Yes. And how that occurred was that the chairman selected Mr Lambert for rotating off the board and retirement. Do you recall that?---Well, I only recall it from what I've heard in the last days here.

30 And you knew also by that time, the time you wrote that letter, that Mr Andrews, although off the board, had taken Queensland Racing to court, to the Supreme Court, and litigated. Do you recall that?---I don't recall it, but I expect I would have been -- been aware that that was going on at the time, yes.

35 You were not only aware; you were involved, were you not, in dealing with a complaint that came from Mr Carter in relation to the way in which the recruitment of -- had operated in selecting the -- I'll start that again to get it right. You were involved in drafting a letter from the Minister responding to a complaint in relation to the independence of the recruitment agency that had undertaken the shortlist selection of candidates to replace Andrews and Lambert, weren't you?---I may have been. I don't recall.

40 Okay. And could Mr Kelly see the document behind 94, please?---Yes, I've got that, Mr Bell.

45 And you'll see your initials there on the brief -- Minister's briefing note in relation to a letter from the Honourable W. Carter QC, looking at purpose?---Yes.

And I haven't attached that, but I've got a copy of Carter's letter if you want to see it. I'll have it handed up to you so you can refresh your memory if you need to?---Do you want me to read the whole - - -

5 No, no. Just to refresh your memory generally about it, because that will give you reference back to your briefing note. The briefing note is about briefing the Minister on an appropriate response, I think, isn't it?---Yes.

Okay. And I think you'll accept now, looking at your initials on the briefing note,  
10 that you played a role in it?---Yes.

Okay. And if you don't mind just turning over to 94A, please. This is a letter, you'll see, to the Minister which was referred to in the briefing note, a letter in response to the Carter complaint from Mr Bentley, the chairman of Queensland Racing?---Yes.

15 See that?---That's the 10<sup>th</sup> of August.

10<sup>th</sup> of August, please, yes. You got that?---I've got - - -

20 Do you recall that now, looking at it? That that was a letter that was factored into the briefing note at the time it was drafted?---It probably would have been, yes.

Okay. Just looking at the letter of the 10<sup>th</sup> of August that Bentley wrote to the Minister who, clearly enough, was your Minister at the time – that's right, isn't  
25 it?---Yes.

Okay. He commences it "I am in receipt of a letter from Bill Carter dated 6 August that claims that the selection of directors process carried out was inconsistent with the QRL constitution, lacked procedural fairness, was anti-discriminatory, possessed  
30 elements of cronyism and as such was illegal." See that part?---Yes, I do.

And then the next paragraph: "I note with considerable concern that the letter written by Bill Carter in line 2 seeks to have you believe that he expresses 'the racing community views' and in paragraph 3 of that letter, line 5, he speaks of 'many  
35 respected racing stakeholders and others.'" And just – I won't read the whole letter. I just wanted to go to the next paragraph. "Further, on page 2, second paragraph, he purports to set out 'the factual matters which give rise to industry concerns'. On page , third paragraph, he sets himself up as the independent recruitment consultant by telling you what he 'knows' without giving any facts about who they are or how  
40 he made that assessment." Just – and then if you go over the page, please, to the heading Candidate Eligibility, what he says – Mr Bentley says in the third paragraph – you'll see in the last line he advances that "The process was independent of QRL." See that? It's in the last - - -?---In the third paragraph?

45 Yes?---Yep.

The last line, please?---Yes. Certainly.

5 “The process was independent of QRL.” And then in the Interview Process, the next heading, the last line commences – the second-last line: “The basis on which the independent recruitment consultant selects those for interview is a matter for the independent recruitment consultant”?---Yes, I see that.

And that would accord with your understanding of what was intended in the constitution, I take it from what you said yesterday?---No, I think there was eligibility criteria for – for people to be appointed to the board.

10 Set out in the constitution?---Yes, annexed to it.

So your expectation was, by reading the constitution, that, to quote Mr Bentley, “The basis on which the independent recruitment consultant selects those for interview is a matter” for them. That’s what you would think is right according to the constitution, would you not?---Well, the basis – there’s certain criteria specified in the constitution, looking for a skills set.

Yes?---Yes.

20 So using that criteria, the independent person selects a shortlist?---Yes, yes, yes.

Okay. And then if you go to the next heading of Mr Bentley’s, Shortlist Numbers, please. And in the second paragraph – “Carter’s comment is ill-considered and wrong in the last sentence. The final decision was that of the independent recruitment consultant. No guidance or direction was given to the independent recruitment consultant by QRL”?---Yes, I see that.

You would expect that that would be the right way to do it, would you not? That being independent, it would not be appropriate for QRL to seek to define other criteria other than that set out in the constitution. Wouldn’t you agree?---No. They would be the – the criteria that should be looked at.

That is, the criteria in the constitution would be the criteria for reference to the independent selection of the shortlist?---Yes.

35 Okay. So clearly enough, you knew after this letter and after the briefing note that was involved in it – that involved it, I should say, which was the 13<sup>th</sup> of August 2009. What happened was Andrews commenced litigation about these questions, didn’t he?---Yes, I think so, yes.

40 And in that litigation, Andrews won. Do you recall that?---Yes. The recruitment process was – was not right for some – I don’t recall the reason why, but - - -

45 Okay. Well, let’s have a look at it. The point that the Supreme Court found was that, indeed, the independence of the recruitment consultant was tarnished because of instructions that had been given by QRL to him. Do you recall that that was the reason?---No.

You don't recall?---Yeah. I don't, but – but now that you've said it – yes. It seemed to - - -

5 101, please. 101. Could Mr Kelly have the document behind 101, please, which is folder 4.

If you look to page 11, looking top right-hand corner – page 11 of 14 – Justice Wilson found in paragraph 67 one - - -?---Sorry. I'm - - -

10 I'm sorry. Yes?---Para 67.

67 is the one under the heading Relief Sought.

15 COMMISSIONER WHITE: Page 18.

MR BELL: 18.

COMMISSIONER WHITE: Did you want paragraph 67?

20 MR BELL: Yes. I'm sorry. Mine's page 11, but anyway it doesn't matter.

Is yours page 18? I'm sorry?---Beginning I am satisfied that?

25 COMMISSIONER WHITE: We've got the - - -

MR BELL: Yes. No. That's fine. [indistinct], please. I haven't got a page 18, but it doesn't matter.

30 COMMISSIONER WHITE: It's the paragraph – they should be neutral if you've got the right paragraphs from - - -

MR BELL: I do have the paragraph. I was looking at paragraph 69.

35 COMMISSIONER WHITE: 69.

You've got that, Mr Kelly?---Yeah. Yes. I've – yes.

40 Under the heading Relief Sought? Yes?---Well, no. I've got paragraph 67 starting I am satisfied that Mr - - -

Yeah. 69, Mr Bell wants you to look at now - - -?---Oh, okay.

- - - under Relief Sought?---Sorry.

45 Yes.

MR BELL: Thank you. I'm sorry for that, Mr Kelly. Her Honour identifies the relief sought by Mr Andrews, and you see that he's sought relief – in number 1: “A declaration that the shortlist has not been prepared in compliance with clause 17 of the constitution”?---Yes.

5

And 2: “An injunction restraining QRL, by its chairman, from announcing at the annual general meeting scheduled to take place on the 17<sup>th</sup> of November the election of the two directors.” So Andrews was trying to hold up the process, because he had said that the constitution had not been complied with?---Yes.

10

Okay. And then if you go over, please, to 84. I'm sorry. It's easier to go over to the end of the judgment, please. Under the heading Orders - - -?---Yes.

15

- - - you see there in number 1 that her Honour declared that the shortlist had not been prepared in accordance with the constitution.

COMMISSIONER WHITE: You – you'll actually have to go – you'll have to go back to the front page of that judgment - - -

20

MR BELL: Oh, I'm sorry. I've got a different copy.

COMMISSIONER WHITE: - - - to get that, Mr Kelly. So if you just go right back to the front – see those there?---Yes. Got those.

25

MR BELL: I've got your copy now. Yes. Yes. On page 1, you see under the order – number 1?---Yes.

So she makes the declaration that the constitution was not complied with and in number 2 she restrains the chairman?---Yes.

30

Okay. So that's what Andrews had sought and he was vindicated in that, in the sense that something had occurred in accordance with instructions given to the independent person from – instructions came from QRL that caused the constitution not to be complied with?---Yes.

35

And clearly enough, anybody reading that would have concluded that Andrews had not been given his constitutional right to a selection in accordance or rejection in accordance with the constitution?---Yes.

40

Okay. So I remind you that in the earlier letter that was the subject of your briefing note, Mr Bentley had stated, however, that there was no direction from QRL. Do you recall I showed you that?---Yes. You showed me that.

45

Okay. When this judgment came down, did you appreciate that after it what happened was QRL sought to reengage the same consultant to complete the process, despite the court order, and that there was another case with another Supreme Court judge making another order to stop QRL?---I don't recall that, Mr Bell.

Okay. Let me show you. McMurdo – 101A, please, Mr Kelly.

COMMISSIONER WHITE: It should be the next document in your bundle, Mr Kelly.

5

MR BELL: And I hope it's the same one, Mr Kelly, as mine. So if you go over to page 8, looking at the top-right hand corner – have you got a heading Order there on your copy, Mr Kelly?---Page 9 I have Order in 9471 of 2009.

10 Okay. That's what I'm told is it. And you see the order that this Supreme Court judge made soon thereafter was that QRL be restrained again from acting upon any shortlist provided by Northern Recruitment in the process of selection. Do you see that?---Yes.

15 Okay. So clearly enough, don't you agree, the position that Mr Bentley had advanced to the Minister was incorrect. Somebody at QRL had, in fact, been demonstrated to interfere with the proper process in accordance with the constitution?---It would appear that what is in the Bentley letter isn't what is here. No.

20

And let me tell you something else. I don't know whether you knew this. Did the Office of Racing at any time undertake any investigation in relation to Mr Carter's complaints about the process?---I don't recall, Mr Bell.

25 Beg your pardon? Sorry?---I don't recall, Mr Bell.

Well, they didn't; I can tell you?---Yeah. Okay.

30 Okay. Not only that, if one took the time to investigate it and just read what Mr Bentley said in the case during giving evidence on oath, it's clear what he said was that he did give instructions about a criteria to the independent person and he did, in fact, give a criteria that wasn't in the constitution. You see what I mean?---Yes.

35 And for anybody who's doubting me, it's at page 2 line – page 2-31 line 30 to 40 of the transcript of the trial. So what we have, then, is an occasion here where clearly, within your mind, Mr Bentley has told the Minister something that the Supreme Court has brought into question?---Yes. Based on this, yes.

40 Yeah. And was anything done about that?---At the time I don't – I don't believe so. I don't – well, if it wasn't investigated we wouldn't have been aware that that was the situation.

Okay. Could Mr Kelly see, please, tab 88.

45 So the court came down with its determination at the end of 2009 and what had occurred, as you know, is that you had prepared the briefing note in August 2009. This document, which is styled Queensland Racing Industry Issues Paper – do you

recall this coming to your attention from Queensland Racing during 2009?---Yes. I do.

5 Okay. Would you mind going to page 40 of it, please. If you – just turning back to the pages before, you’ll see that from about page 36 Mr Bentley advances, in his issues paper, information he contends relevant under the heading QRL Constitution and Elections?---Yes.

10 And then you see he sets out Background – Constitution and Election Process and then on page 38, Proposed Adoption of the Amendments to the Constitution. See that?---Yes. I do.

15 And then on page 39, Members Vote, and over those paragraphs he seeks to set out facts about how that election process occurred in 2008 that we were dealing with yesterday?---Yes.

20 And then at the foot under the outcome on page 40, he advances this: “Following initial complaints by a QTC committee man, Mr David Dawson, and a follow-up by Mr Bill Carter, the election process of QRL was referred to ASIC and the Crime and Misconduct Commission and the Queensland Police Fraud and Corporate Crime Group for investigation.” Dot point 1: “All three agencies cleared the conduct of QRL, its directors and executive officers.” Dot point 2: “Prior approval by ASIC was received for the changes.” Dot point 3: “The most pre-eminent constitutional lawyer, Mr David Jackson QC, advised on the entire process.” Now, nothing could  
25 have been clearer in your mind, I suggest, Mr Kelly, that Mr Bentley was telling a lie to the Minister in advancing that as the right outcome, wasn’t he?---The – the first dot point - - -

30 Yes?--- - - - is clearly not – not correct.

But I said something different. I said he was advancing a lie to the Minister. That must have been clear in your mind at the time you received this in May 2009?---I don’t think I thought of it in that term. No.

35 Okay. But that is the truth, isn’t it? You had dealt with this topic, and we dealt with - - -?---Yes.

40 - - - how you dealt with it yesterday. He is saying something of the same type that you had promoted to the Minister in the draft ministerial statement, isn’t he?---Yes. He’s saying he was cleared and that as we - - -

45 He’s saying he and Mr Ludwig were cleared as was QRL when it was clear as crystal from what ASIC said that they hadn’t cleared them at all. What they had done is determined as a matter of law they didn’t have the jurisdiction to determine whether the conduct was misconduct or not. As had the CMC?---Yes.



So he was advancing a lie to the minister there, wasn't he, looking at it now?---Looking at it now, yes.

5 Yeah. But you couldn't see that at the time as the regulator?---No. I didn't see it that way at the time.

Okay. What way did you see it?---It – it was – it was another paper or – it was another piece of – part of correspondence from Racing Queensland or Queensland Racing that advances their case as best they can.

10 Yes, exactly. Because this was a fundamentally important document because what he was doing was advancing a case that the government provide a massive amount of money for infrastructure, wasn't it?---That's what – I think the issues paper was aimed at law of that infrastructure.

15 Yeah, so of all the things that were important so far as the public's money was concerned, this was right at the top?---Infrastructure - - -

20 When he advanced this to the minister this was right at the top, was it not?---The infrastructure issue?

Yes. The topic of this paper was right at the top?---Yes. It was an important issue at the time, yes.

25 And you see, if you look back and have a look at what Bentley's doing here – from page 36 he starts with this argument, 36: "QRL constitution", and then he goes over and he's advancing a proposition in favour of what he has over the page on page 42 under the heading issues, "As a result of unfounded allegations, the minister did not endorse the constitutional changes that were supported 14 votes to 1 and widely supported by the industry. The board will be in ongoing election mode. Industry funds are used to engage a recruitment agency." See that?---Yes. I see that.

35 That's rubbish, isn't it, because you knew at the time that what happened was that nobody had been cleared about the proxy at all. That it had never been dealt with appropriately for investigation, had it?---It hadn't been investigated by us, no.

40 And indeed as time went on you must have reflected back on that statement too, "unfounded allegations", because indeed you knew that the allegations were either founded or unfounded and nobody'd determined it. You see my point? So it might undo the whole argument?---Can I just re-look at this issues paper?

45 Yes. Of course you can. Of course?---My recollection of looking at this issues paper, Mr Bell, was this issue you've – you've drawn my attention to this morning is – is part of it. But the – the key aspects that I believe the issues paper was addressing was the need for a redirect or a funding source to be provided to address industry assets; poor state of what of the racing infrastructure was and the ongoing drain on industry funds to non-revenue producing asset – or assets.

I understand?---Now, certainly I – I didn’t, at the time – I’m not sure that I paid a lot of attention to what was in Bentley pushing his own – own wagon as he did in a – in a lot of correspondence and - - -

5 Okay. Well, I accept that it – immediately what you say is perfectly accurate. You didn’t pay much attention. My question really is: was that appropriate not to pay attention to a fact being stated there to the minister, your minister, in circumstances where you have looked at this and you’ve been involved in meetings and you knew it wasn’t true? That’s my point, you see? Why not pay some attention to it when it’s  
10 you who’s in charge of the overview powers under the legislation to ensure associates of the control body are still fit to be the control body associates?---Yes.

Is the man telling a lie? Do you see what I mean?---I – I agree.

15 Okay?---In hindsight, more attention should have been paid to the – that aspect of it.

Okay. Now, let’s talk about the aspect you’re – you’ve mentioned and that the fundamental topic is money, isn’t it?---Yes.

20 That’s what you’re saying. Could Mr Kelly see folder number 4, 102 please? This is an email from Justin Murphy of the Premier’s office to Carol Perrett in your office in relation to the subject racing submission. And in particular in relation to the issues paper topic. And what is said by him is, “Thanks for the latest submission”, meaning referring to a submission coming from Carol Perrett, one would think. “Please find  
25 Department Premier Cabinet comments below.” You see where I’m at?---Yes, I am.

General. And the first dot star point is, “The options presented all involve a significant contribution for government. What work has been undertaken by DD” which is the department in which Racing found itself at that time, isn’t it?---Yes.

30 “to validate the findings of the issues paper? What work has been done by the DD to identify industry based sources of funding or develop other options? It is not appropriate to simply rely on an industry generated issues paper without undertaking a critical assessment of the recommendations provided and provide three options to  
35 government, all of which involve government contribution of between \$90 million and \$200 million.” And then in the next star point, “To this end, DD needs to provide a greater level of analysis of the issues paper and value-add to the process by developing alternative funding options for the consideration by government.” And then a few star points down, about three. I’m looking at about point 6 of the page.  
40 I’ll read it to you. It’s halfway through the paragraph. It says, “In short, the submission does not solve the fundamental problem detailed in paragraph 4 on page 1; that there is insufficient funding for both prize money and infrastructure.” And then the second last dot point, “The opportunities presented by asset sales eg Deagon, Albion, should be fully detailed in the sub as a possible contribution by industry.”  
45 Next dot point, “In summary the submission poses many problems and provides very little analysis and even fewer solutions other than significant government funding. More work is required to validate the assumptions provided in the industry prepared

issues paper and develop alternative options for government.” Do you recall this question of the lack of consideration being suggested by the Department of Premier and Cabinet coming to your notice?---I believe I – I did see this or something very – well, something similar, yes.

5

Okay. And you’ll see with that criticism, I suppose, was it not a criticism that was well based?---It brought out points that had to be considered and addressed. This was very early on in the cabinet submission development process. The – the points there made by Mr Murphy, I mean, they’re – they’re his points. I mean he – I don’t necessarily agree with what’s there. This is the process of inter-agency consultation where there’s lots of emails come backwards and forwards between departments saying, “I don’t agree with this. This is wrong.” These – these are his points. But  
- - -

15 Yes. I understand?---But a lot of them I don’t think are valid because by this date I’m reasonably confident to say the main decision had already been made that there was going to be some sort of a redirection of tax funding or some – or a loan facility. I think there were a range of options being considered at the time. So his comments about whether the – it’s really about whether the funding’s appropriate and whether  
20 that’s going to be done. I think that decision had already been made.

Yes. I see. And was it a decision that was made with any reliance upon the issues paper?---There would have been some reliance. Yes, definitely. It was - - -

25 Because it’s - - -?---I think the issues paper was the - - -

Start of it all, wasn’t it?--- - - - the document that – that kicked it off.

30 Yeah. It was a very thorough position that Mr Bentley advanced to government for this massive request for money, wasn’t it? I say massive advisedly because it was a massive amount of money, wasn’t it?---Yes.

And anyway you say, and I hear you loud and clear, that after the government had made the decision to give him a tick?---Well - - -

35

Premiers and Cabinet were coming in still saying, “the research was inadequate.” That’s what they were saying?---I – I don’t think – I don’t think government had at this stage decided to give him a tick. It had said – Bentley had come to government in June I think, after the issues paper probably had been produced, saying that we  
40 need – they needed this money. It was needed for the industry.

Look, Mr Kelly, I only said kick because I thought that’s what you were saying to me. You tell me that?---Well, it was – it was - - -

45 Was this done after or before a decision was made to approve the idea of giving a great deal of revenue over four years toward infrastructure for racing?---Done before to approve, I believe. I don’t believe it had been approved by cabinet at that stage.

Okay. Very good. So anyway, this criticism is somebody's view but not one you accepted. Is that what you're saying?---I don't accept all of it, no.

5 Do you accept any of it? You see, the reason I ask it, to make clear what I'm getting at, is one thing is for sure. You've accepted already that insofar as Bentley was talking about the election process and how it was not working, he was giving an example founded upon the proposition that was untrue that research had been undertaken in relation to the alleged misconduct of directors, and that had been a finding that the assertions were unfounded – without foundation and people had been cleared. Now, we know you didn't research that and provide any indication to the Minister about that. This seems to indicate the same in relation to the financial side. Your point is that it's wrong?--- Well, my point is – I don't believe there was any debate or lack of knowledge that racing infrastructure across Queensland was in an exceedingly poor condition.

15 Okay. Well, we don't want to go to that broad thing. What I'm talking about is the dealing - - -?--- Well - - -

20 - - - by the Office of Racing with the issues paper, certainly for the part about the elections, is completely without any research. This email tends to indicate to any reader that they were saying the same thing about the financial aspect as well?--- No, Mr Bell, what it suggests is Justin Murphy's view is – this is his opinion.

25 Yes. Yes?--- I don't necessarily subscribe that this was the view of the Department of Premier and Cabinet.

Okay.

30 COMMISSIONER WHITE: But, Mr Kelly, in the start point that begins "The benefits of the proposed infrastructure upgrades"; you've got that one?--- Yes I have, Commissioner. Yes.

35 All right. It suggests that there is no assurance in the issues paper that the proposal would put the racing industry on a sustainable footing. So it doesn't solve the fundamental point that's the reason for getting the money. Surely that would be something that you would need to investigate, otherwise it really is the old adage of throwing good money - - -?--- Yes, Commissioner.

40 - - - after bad?--- And this was – this email was in the middle of the process. There was more work done on assessment analysis and options in cabinet submissions after this.

Okay?--- But that's my recollection as to - - -?--- Okay.

45 - - - the best I can do without seeing the temporal train of – because I mean, we started off, I think, with three options and then we went to five and then we went to six. And then we went back to three.

Okay. Do you recall in any of those later submissions any work being done on the point that Bentley made about the clearance of the directors?--- No, there was none.

5 Okay?--- Those submissions were focused on infrastructure and - - -

Whose submissions were?--- The cabinet – the issue this relates to and the cabinet’s submissions dealt with, at this stage, the options to deliver a tax redirection.

10 Okay. You see, I suppose really looking at it, trying to be objective about it looking backwards, one would think that if the Director of the Office of Racing sees a very important issues paper come forward to the Minister, to his Minister. And he sees a clear untruth in it. Then one tends to go to the rest of the document and test its veracity, test its reliability. Test whether these figures even are reliable and the proposals are reliable. You know what I mean?--- And I agree with you, Mr Bell.  
15 And I think in a lot of the correspondence that came from any of the control bodies, the figures weren’t reliable, and they did need to be tested. And that’s why, in this process, there was – in particular we had Treasury involved in the process who have that understanding of - - -

20 Yes?--- Figures and finance.

Well anyway, you – I get your point. And the point, just to conclude on that email, certainly at the stage that you’re identifying as an early stage, it looks like your office were being said to have accepted the industry position without any proper analysis.  
25 That’s what the contention was in it; wasn’t it?--- That’s what Murphy says in the email.

Okay. Let me show you another example of why I’m raising this with you and what appears to be an acceptance by your office of whatever comes from QRL. Can I  
30 show you another example, please - - -?--- Certainly, Mr Bell.

- - - for your comment? Could Mr Kelly see folder 3, document 73, please. What happened was this was just a – Bentley’s issues paper is dated May 2009. As you rightly point out, work was done by government in assessing the proposal. And  
35 eventually there was approval for funding for the infrastructure scheme, we know that. Then what happened was – if you look at this document, please, in divider 73. It’s a letter from Mr Bentley to the Director General of the Department of Premier and Cabinet on the - - -?--- No. Sorry, Mr Bell, I’ve only - - -

40 I’m sorry?--- I’ve only just got the case for change but I – oh, the case bits.

Okay?--- But I know there was a letter from Bentley to - - -

Let me just show you the covering letter, please. I’m sorry that that’s not there?---  
45 This is the letter from Bentley to Ken Smith?

Yes?--- I’m all - - -

That's okay, you have a look at it. Thank you for offering not to?--- Yes. I'm – I've seen that before.

5 Okay, just hand that back. Yeah. So Bentley seems to now put the next document in the line that ended up having an influence, it would seem. And he styled it the case for change. And it was in relation to the QRL constitution, I think. What it says is, "Dear Ken, please find enclosed the QRL constitution, the case for change."; okay? In my letter that I've just given you?--- Sorry, I gave it back to - - -

10 No, that's okay?--- She's quick.

MR A.J. MacSPORRAN: Commissioner, I just wondered whether we could be told the date of that letter. We don't have a copy of it, so.

15 MR BELL: Yeah. Yeah. 10 November 2009.

MR MacSPORRAN: In '09.

20 MR BELL: I'm sorry you don't have it.

COMMISSIONER WHITE: In 2009, Mr MacSporran.

MR BELL: I'm sorry you don't have it.

25 COMMISSIONER WHITE: I think that you'll find it's probably in the material somewhere and I think everyone's familiar enough with the letter.

MR BELL: Let me just read you a little bit. I'll drop the letter.

30 COMMISSIONER WHITE: You can – we've got a facility to – we'll see if we can get it up on the screen.

MR BELL: Let me read you out just a little bit of it that's to introduce the topic. I'll read you the letter. "Please find enclosed the QRL constitution, the case for  
35 change. This confidential document review was requested by the Honourable Anna Bligh, Premier and Honourable Andrew Fraser, Treasurer, at our meeting on the 27<sup>th</sup> of October. A case for change is necessary and urgent and I seek a meeting with you, Mr Lachlan Smith and those in your respective departments so that further discussion on this document can progress. I'm available" diddle diddle on the  
40 certain dates. So it would seem that Mr Bentley's had a meeting with the Premier and the Treasurer Mr Fraser. And as a consequence of that meeting, he's produced the document that's before you now?--- I'd accept that, Mr Bell.

45 Okay. And would you have a look at it for me, please. And I'll just show you parts of it just to refresh your memory. At the commencement of it, I'm looking at the bottom right hand corner of page 3, overview is the first paragraph – is the first heading and the first paragraph. He says, "The purpose of this submission is to

5 recommend a suitable structure for the Queensland racing industry and follows discussions with the Premier Honourable Anna Bligh and Treasurer Honourable Andrew Fraser on a transparent and workable industry structure that encapsulates the best principles of independence and commercial governance for the control body structure for the racing industry. The recommended structure is simple and commercially sound, and recommends the amalgamation of three racing codes in Queensland into a single control body structure. So that seems too be the topic that he's writing about?--- Yes.

10 And I know that this came to your office, this document; didn't it?--- Yes, definitely.

And - - -

15 COMMISSIONER WHITE: Mr Bell, sorry, just to interrupt you. For those who haven't got – haven't found the document, it's up on the screen, that letter to Mr Ken Smith from Mr Bentley.

MR MacSPORRAN: I think we were told helpfully it's 105, Commissioner. That's where it - - -

20

COMMISSIONER WHITE: Thanks, Mr MacSporran.

MR BELL: So - - -

25 COMMISSIONER WHITE: If we could go back to the case for change.

MR BELL: So let me show you, please. On page 5, the bottom right hand corner, the topic is with the heading "Current Control Body". Do you have me?--- Yes, I [indistinct] .

30

And the second last line, "However, due to political constraints that existed at the time and the impact of AR1, which is Australian racing rule 1, the government was not able to fully implement the preferred model." And then the next paragraph, "The constitution, through necessity, adopted the present voting structure at its inception when the QRL constitution needed to comply with the tightly administered Australian rule of racing AR1. The strict application of AR1 meant that there could be no appointees, other than by clubs and industry associations, to the control board. This rule protected the status quo and kept governments out of the supervision of racing, as well as protecting the traditional, inefficient, amateur administrations." Did you ever investigate whether, in fact, AR1 was no longer being strictly applied?--- Yes, on a number of occasions, Mr Bell. And I think it's AR1 and the late – it's AR7 is the actual rule, and AR1 gives it effect. And before the recruitment or the selection process that identified appointees to the thoroughbred boards - - -

45 Yes?--- Was conducted, I confirmed that the process that was being used with having a selection panel with no direct government appointees to it conformed with that requirement. And there should be correspondence from Andrew Harding, who was

the chief of the Australia Racing Board, confirming that. And the last time I did it was, I believe, last year when the changes were made just recently to the – to the structure.

5 Well, one of the letters that Mr Harding sent you I wanted you to go to, please, which is in folder 5. It's document 154. It's a letter of the 7<sup>th</sup> of May 2010 and you take your time to read it, Mr Kelly?--- Yes. Thanks, Mr Bell.

10 The second last paragraph, it seems to suggest the opposite; does it not? It terms of your other enquiry, I confirm that a long established requirement of recognition of principle racing authority status and membership of the Australian Racing Board is that the committee or board of directors of a state's racing control body should not consist of government appointees."?--- Yes.

15 Was that inconsistent with what your understanding was or what had been said in the case for change?--- My understanding is the position put by Andrew Harding in that letter is the position – now, I know across Australia there has been different models put in place. And there's been, I think, some softening of the Australian Racing Board's position. But fundamentally they've still got that rule AR7 in place that Mr  
20 Harding refers there in the – and I mean, the letter speaks for itself.

See, the letter speaks for itself. And what it says is – what it seems to suggest in May of 2010 is that is still the rule. And I don't see anywhere in there it suggesting, as Mr Bentley does, that there's no need to worry about it; do you?--- No. I mean, that - - -  
25

Was there any research or any call made to Harding or anybody else at the Australian Racing Board in relation to adherence to that rule as suggested by Bentley in the case for change document?--- I had telephone discussions with Andrew Harding before any of these structural changes occurred within the industry, because I was patently  
30 aware that I didn't want to be proposing any type of activity the Australian Racing Board was going to call into question. It was well before my time but I know that had happened historically in Queensland and caused, you know, some problems at that time.

35 See, my point is a little different, and please bear with me. My point is that Bentley is saying, when he sends this case for change to the premier and the Minister, that there's no need for the government to worry about the rule any longer. Did anybody do anything and keep any record in the Office of Racing to check that was, in fact, true? Do you recall that?---I think these – these letters from Harding show that we  
40 did check with the Australian Racing Board.

Well, and that's right. And it seems to suggest that you shouldn't rely upon what Mr Bentley said, does it not?---Well, I think as I've said earlier, a lot of documentation that came signed by Bentley had his most favourable spin put on it,  
45 for want of a better word. It was – or it was not in as much detail as others might write. And I think that AR – the Australian Racing issue that he refers to there is – it is a view, yeah. The rule has softened, but it's quite clear that the rule is still there.



5 I don't understand all that. All I'm saying to you is you're the regulator, you receive this case for change document, Bentley makes this assertion, and yet I'm seeing a letter after the event from Harding from Australian Racing saying the opposite, and a little confused. What I'm really asking is did any analysis of what Bentley said there occur by the Office of Racing?---Well, it did, because the final model didn't - - -

Okay. Do you have any record of those inquiries, please?---The inquiries with?

10 With Australian Racing?---Well, there's a letter back, and I would have written to them on the 28<sup>th</sup> of April.

15 Okay. And when you got that letter back, did that alert you that Mr Bentley's statement may not be accurate?---I don't think we're in any doubt – any difference of opinion there. Mr Bentley's statement is – is his view, and it is a softer view of the – and I can understand why someone would have that view, because it has softened across Australia, but that is still the Australian Racing Board's position. I confirm that, which is obvious from Harding's letter back, and the final selection process that was – or the model that government approved conformed with what the Australian Racing Board required. That was to be sure that we were in compliance with that.

20 So Bentley is just being a little bit – he had a view that might be an interpretation that was open, but the rule was still there. That's how I'm to conclude this discussion, am I?---Yes, that would - - -

25 Okay. Well, let's see if we can do the same with the next page, on page 9, where Mr Bentley, you'll see on page 9, is representing to the premier and the treasurer - - -?---I'm sorry, Mr Bell.

30 Page 9. I'm sorry. You haven't got it. This is the case for change that I was on. Document 73 in folder number 3, please. Sorry, Mr Kelly. What I was doing was, as you know, going through this document now to see what sort of position was taken by the office - - -?---So I'll - - -

35 - - - in relation to Bentley's statement?---I'll keep the case for change handy?

Case for change, yes, please. I was looking at page 9, please, in the bottom right-hand corner?---Yes.

40 Under the heading 2009?---Yes, I've got that.

His heading is Andrews – “William (Bill) Bernard Andrews v Queensland Racing Limited.” See that part?---Yes, I see that.

45 And you see in the second paragraph what he advances is, in the third line, that “Andrews was in receipt of financial assistance by others prepared to co-fund the action brought by him”. And his position, that is, Mr Bentley's position, is advancing that there's difficulties created by the constitution in its present form

because there's stakeholders out there that will cause trouble. That's his point, you see. Do you see what I mean?---I see – I see where you're getting to, yes.

5 And cause trouble, you see – I'm asking you for comment – cause trouble in the sense of going to the Supreme Court and winning. That's trouble?---I don't see that that is trouble. That's people's right to do, and if they want to do it, do it.

Exactly. Me too, Mr Kelly. But what he's advancing to the premier and to your office is that, if you look at the last paragraph on page 9 – “Identifying and  
10 understanding the motives of those that have co-funded the *Andrews* action provides a great insight as to the underlying reason why the action was initiated.” That just sounds like your press release draft for the Minister, doesn't it, attacking the messenger of the complaint?---It does there, yes.

15 It's exactly the same, isn't it? It's going hard rather than addressing the argument properly. See if you can find in here anywhere where it says the Supreme Court said QRL had done the wrong thing?---I'm – I'm sure it doesn't.

No. I am too. And turn to page 10, the next page, and the first new paragraph. “In  
20 terms of the orders that have subsequently been handed down, in short, QRL is required to recommence the election process for two new directors starting with the compilation of a shortlist of candidates by an independent recruitment agent.” And if you jump one paragraph. “The inquiries have emanated from disgruntled persons  
25 within the industry, who lack a preparedness to accept the necessary change that is vital for the thoroughbred racing industry in Queensland to survive and prosper.” What is this man talking about? This is a valid right we all have in the community to take him to court and win, and this is being put up to the premier. Did you see this at the time?---Yes, I would have seen what was written there.

30 Did you do anything about it, or did you just accept what the industry was saying on this topic?---No, it didn't – except it was – it discounted – I mean, in this case for change, the whole – the whole litany of history provided about what court actions have happened and who's done what – that wasn't – that wasn't the main issue for us in this. This was Bentley recounting history to – to his view of it.

35 Yes. But the problem is, you see – we're never going to escape this, Mr Kelly – that if this sort of statement is made in a very important document required by the premier and your office does not test it, it's going to be accepted as factual, and they're going to act on it. That's the problem, you see. That's what I'm addressing  
40 and asking you to help me with. That's your job, you see, isn't it?---Yes. In hindsight, Mr Bell, I accept – I accept that with all – all of the – any inaccuracy – any statements that Racing Queensland made or any of the [indistinct] made in any of these documents, yes, should have pulled them apart and put – said this is wrong and that's – I – I accept that.

45 Look, I know what you're saying. The main topic wasn't this. I understand. My point is that when Bentley is advancing lies and arguments not putting the whole

story forward, it tends to indicate that this control body associate isn't fit for the task because he's telling the premier something that's not true or not the full story. You see my point?---I see your point.

5 It's pretty important stuff, isn't it, because our government works upon government people like you checking what's coming from the industry rather than just going "Yeah, that's fine. Send that up. No problem." That's the point I'm trying to get at, you see?---Yeah, but just – I wanted to revisit what you said. This wasn't – this –  
10 this wasn't paid any attention at all because it's – as I said, it's – it's Bentley rewriting a part of history that suits him, but it wasn't what the outcome of this document was trying to achieve.

Well, it was, you see, because what the document was trying to achieve was "we've got to get rid of the constitution that we've presently got because it doesn't work.  
15 You cannot have little people who are stakeholders putting their hand up about every single little decision we try to make. You've got to get rid of Country Racing out of the constitution. It's a joke. And all these little people will fund every single little piece of litigation. Get rid of it". That's what he's advancing. That's pretty important. That's the constitutional change. The case for change is all about the  
20 constitution. You see? You got it?---Yes.

Okay. Well, address it. Where he's advancing an argument that "In the past we've just had trouble from these fools," he doesn't tell the premier that, in fact, they were right. The government – the court confirmed what they were complaining about was  
25 right. He doesn't say that. It's terrible. It's disgraceful?---I accept that it's not there.

It's disgraceful, isn't it? It really is. Going up to the premier and saying that when, in fact, these people were – Andrews was exercising his legitimate right to go to court, and he won. Nothing about it at all. It's really terrible, don't you think? If  
30 you don't think, say "No, I don't think – I don't agree with you," please?---Yes, it – it – it should. The document should tell the full picture, if you're putting it - - -

Yeah. See, we in the law call that misleading, because you tell half the story and it throws the person who receives it off the track. You know what I mean?---Yes.  
35

And it's true. What he says is true. Those people know they've funded the litigation. You know, they might have helped him with the money, but who cares?---That doesn't matter.

40 That's not important, you know. The important point – what he's saying is, "This is bad, to have little stakeholders causing trouble all the time. You can't have that. Let's chop their rights out and don't give them a vote in the future." Pretty fundamental stuff – you know what I mean?---I know what you mean. Yes.

45 Okay. So do you agree with me?---I agree that this document doesn't reflect the truth of a whole range of matters that – that are – that are laid out in it, and I – I don't know how to say it a different way. The – it's all the – the history that laid out there

that's – and particularly the – with all the legal stuff that – that was going on is written to support QRL view of the world, and it's not accurate.

5 Yeah. That's right, but it's written to the premier and my point, to finish it – I won't keep going on and on about it – is that you have a vetting role, putting the other point of view so that the decision-maker, who doesn't know everything, has from a very experienced office – like you, who's been there since 2003 – with the alternative views. “Andrews won that case, Premier. He was legitimate in doing it, because Bentley had been ringing the independent recruitment agency and trying to influence  
10 them and Shara Reid had given them the wrong information.” I should tell you that too. It wasn't about the electorate being – coming up with silly complaints. They won. You know what I'm - - -?---Yes.

15 Okay. Enough of that. So I'll just show you another example. If you go to folder 4, please – I'm still on that Case for Change. Folder 4, please – divider 107, please, Mr Kelly. If you just take that other one away, please, from Mr Kelly. It's too hard with that little desk he's got. Thank you.

20 Mr Kelly, I'll just try and assist you to get quickly into what this document is, not to waste time. The first two pages are email thread – looking at the bottom – 16 November. Mr Lindsay writes to Carol Perrett. Subject: QR for Change. “Carol, as discussed I would appreciate your comments on the attached paper, including key issues that should be brought to Ken's attention and recommendations for the way forward. If I could have your report by early tomorrow that would be appreciated.  
25 Nick”. So then you go up to about the middle of the page. You see she writes back on the 17<sup>th</sup>, the next day, at 11.25 am to Nicholas Lindsay “Re QR Case for Change – just finished. It is attached. You need to discuss – please call me on” – and then - - -?---Yes.

30 - - - you see Mr Lindsay sends it on to Justin Murphy, I think, doesn't he? Right at the top?---Yes. Yes.

35 Okay. And then if we go over to the third sheet, please, the way it – you may remember, but I'll try and make it quick. It's comments on the QRLs Case for Change?---Yes.

40 And this is a document, clearly enough, prepared by your office – by Carol Perrett, and what happens is – in it, the way she does it if – when you take time, and you tell me if you want to take time. She states – makes statements about the Case for Change document from Mr Bentley, and then if you look over to page 2 in the box, she styles it Office of Racing Comment. Do you see that?---Yes. I do.

45 Okay. And then you'll see over the page, to page 4, the same. Where she's got comments, she adds them in a box with the heading Office of Racing Comment?---Yes.

Okay. Just going back to the one on page 2?---Sorry, Mr Bell.

Yes?---What's the date of – this is all - - -

This is - - -?---November.

5 - - - November '09. Okay. On page 2 under the – in the first box – I'll just let you read it?---Yes.

The comment just seems to sing the chorus from Mr Bentley, I suggest to you. She says that – in the last paragraph: “Grassroots stakeholder resistance to the control  
10 body amalgamations would be expected. This resistance would not be based on any logical argument.” And certainly if I read – looking at it now, with the benefit of hindsight – I'm not suggesting there is a logical argument, Mr Kelly, but I thought the role was to address whether there might be one rather than just taking the party line from Mr Bentley. See my point?---I – I see your point. Yes.

15 She doesn't offer anything at all. Do you know what I mean? Nothing. And then if you go over the page to the other comments?---But - - -

20 Yes. Go on?---I was just going to say some – I take your point with that comment, but I think some of the other comments are quite considered. I mean the establishment of the one control body model did significantly reduce administrative costs. I mean it - - -

25 Well, that's what Mr Bentley said?---But I think there was 1.5 or 1.7 million in savings in – in their first year of operation in – in – so it's - - -

I think my point is – look, I'm not arguing with that. Mr Bentley makes some good points, but I don't see one against him in this comment document. That's what I'm trying to come to, but you take your time and - - -?---Okay.

30 - - - as I've invited you to do before, if you go away and reflect on this – because your lawyers have the bundles – you can come up with other thoughts?---Yes, certainly.

35 Because it's too hard to consume the document quickly like I'm asking you to do. I know. Then on page 4, you see again: “The current” – this is the comment in the box at the top of page 4. “The current constitutional arrangements requiring annual elections results in significant disruption to control body activities, as incumbent directors facing re-election tend to be focused on maintaining their position on the  
40 company board. The continual election cycle also places an administrative burden on the control bodies that is distracting.” And the next paragraph: “The period uninterrupted by director elections would enable the control bodies to carry out the restructuring and reform necessary,” and then reference in the next paragraph to the Product and Program Agreement, which expires in '14. And finally: “In view of the  
45 reasons outlined above, it is considered that an initial term of five years until '15 is a reasonable period which should provide the necessary stability.” I'm telling you when you go away and think about it, just read the Case for Change from Mr

Bentley. That just sings his chorus with no analysis at all, you know. That's my point, Mr Kelly?---[indistinct]

5 And then the next box: "It is considered that a two-year term would ensure that the directors are not constantly in election mode and would provide greater stability for the control body." That's Mr Bentley's point, you see. He's talking all about stability: "Don't make me go to election, whatever you do." You know what I mean?---I know what you mean.

10 And you know, the funny thing is at the time we're thinking about this, Bentley's been the chairman since 2002 of the thoroughbred control body, and this is talking about giving it to him until 2015 without an election. See what I mean?---Yes.

15 And it's just – you recall that I referred yesterday to that legal services unit comment that stagnation might occur, and you say you didn't accept with this board, and I understand. But would it not at some point in 50 years become stagnation? Maybe 40, maybe 30, but at least the argument is valid, isn't it?---Yes.

20 I don't see any of that here. You know what I mean?---Yes.

That's my point I'm trying to make?---I take your point, Mr Bell.

25 Okay. And then if you don't mind going to 110 – this is another reason why I'm asking you this question. At the same time on the same day, the – another department within government, the associate director-general of that other department does a similar analysis of the same and comes up with a much more thoughtful, I'd respectfully suggest, questioning briefing paper. I'll just let you have a look at it?---Mr Bell, I'm not surprised that the associate director-general of premier's department would come up with a - - -

30 Okay?--- - - - a better product than either myself or some of my staff.

35 Fair enough. Anyway, my point is not to compare so much as the – it looks like it's a little more analytical and not just accepting what Bentley says, is my point. Not suggesting we should look at the standards or anything like that. You see they say, "However, the merit" – this is in the second line under Key Issues – "However, the merit of the specific reforms proposed is unclear. Further consideration of the proposals in consultation with the existing control bodies is required, given the factional nature of the industry. A key issue will be demonstrating that any reforms adequately provide for transparency and equity" – equity – "across racing codes and are not seen as undemocratic. No consultation has occurred with the harness and greyhound racing codes." See that part there?---I see that, and – and I believe all – all these – this was in the middle – this wasn't at the end of the process. This was, I think, at the very beginning of the amalgamation. If - - -

45 We're going to go – I'm going to take you through - - -?---All right.

- - - that, how it developed, because as we know – just looking at that last one I read out: “No consultation has occurred,” it did occur with the chairs and you and I will go to that in a minute. But the sad thing about it was it ended up in litigation, didn’t it, in the end?--- It did.

5

Harness were litigating and then Watson was litigating for greyhound?--- Yes.

It was a mess, you know, in the sense of a lot of litigation?--- Yeah, it’s where it ended. Yes.

10

And just under QRL proposed reforms in the first dash point, second last line. “There is a risk however that the smaller codes, particularly greyhound racing, may lose influence and funding.” And then jumping one, “The chair would face election in 2023.” And the next one in the last two lines, “Will be strongly opposed by sections of the industry.” So Dr Phillip was certainly quizzing the logic in the case for change advanced by Mr Bentley; wasn’t he?--- He was – he was - - -

15

I wonder what he would’ve thought if you had pointed out that the Andrews litigation properly understood was a piece of litigation that proved that Andrews had been right and QRL had indeed interfered with the proper operation of a constitution that otherwise would’ve worked perfectly well; see what I mean?--- I don’t – don’t know what he would’ve – you know.

20

No. But it’s likely that if he’s asking these questions and he’s told more bad things, he’s going to sort of – even more questioning. Anyway, if you don’t mind going to 130, please. This is a briefing note which you are partly responsible for because you can see that the action officer was Rachael De Valda?--- Yes, that’s correct.

25

And you were the executive director. And I see your initials there again I think; don’t I?--- It’s - - -

30

COMMISSIONER WHITE: It looks a bit as though Ms Perrett might have signed it on your behalf?--- Initialled for me. Yes, Commissioner.

35

MR BELL: Okay. Is this a – is this part of the role of the Office of Racing something in which you would have had participation?--- I’m sorry, Mr Bell?

Would you have participated in this part of the briefing note and dealing with the case for change?--- Yes. Oh, yes. yes.

40

Okay. Anyway, this briefing note – if you go to the end of it, you’ll see – when I say end, the second page you see the Minister has signed off on it. Noted on the 28<sup>th</sup> of January ’10?--- Yes, I see that.

45

Okay. And then just going back to the first page, “Purpose: to provide background information for your meeting with David Ford, Mike Kelly. It is recommended that you note the contents. The main issue you will be briefed on at the meeting are

addressed in attachment 1.” And then if you go to attachment 1, I’ll just let you have a brief look at that?--- Yes.

5 And you were then, were you, called upon to go to a meeting to discuss the amalgamated constitution – the constitution for an amalgamated body, I should say?--- I don’t recall the meeting but I believe from the documentation – and I would expect that yes, I did.

10 Okay. So let me see if I can help refresh your memory. So it seems in here, if I look at this briefing note, there’s very little that Mr Bentley didn’t get in his case for change document by looking at this. There’s nothing suggesting that – in the briefing that he should be questioning things that Mr Bentley has advanced so far?--- I think the only issue that wasn’t in the case for change was the transfer of staff and  
- - -

15 Yeah, okay?--- Those issues and the staff protections that we developed.

20 So anyway, if you don’t mind going to 115. The way the matter was approached, I think, is by – what happened was eventually there was a meeting called of the three codes’ chairmen on the 23<sup>rd</sup> of December 2009. And this was a minute of it. Do you have that one?--- Yes, I have that one, Mr Bell.

And you were present at that meeting with Ms Perrett?--- Yes, I was.

25 Okay. And about – on the first page, about six paragraphs down. “Mr Kelly told the meeting that the government was not to – was not prepared to release a substantial funding package to the industry unless it was assured that there was adequate and stable industry governance and the funds would be invested commercially to sustain the industry.”?--- Yes.

30 Okay. And me sitting here looking at this, I’m reflecting on the fact that this is exactly the case that Mr Bentley has advanced to government; hasn’t he? Stability through the longer term with an amalgamation, and that he be chairman?--- There was a prior meeting to this on the – I think it was on the 18<sup>th</sup>.

35 There might be but - - -?--- But - - -

40 - - - my point is right; isn’t it? This is the case. We’ve got the lovely Mr Lette who’s the harness chairman and we’ve got Kerry Watson, the greyhound chairman there. And you’re telling them the government’s position is it’s not prepared to release substantial funding unless its assured that there was adequate and stable industry governance. And that’s Mr Bentley’s line; isn’t it?--- I’m reiterating – Mr Bell, that was said to the three chairs on the meeting of the 18<sup>th</sup> or the 19<sup>th</sup>.

45 Okay, it might have been. But at the 23<sup>rd</sup> it was said too; you see?--- Yes.



Okay. My point is it's Mr Bentley's line. That's what he's been advancing since May. Give us the money and here's the way we're going to do it. I want to have the amalgamation of the three. I'll be chairman. I'll have a longer term. And then we'll spend the money the right way. It'll be stable. That's what his point was?--- Yes.

5

You see what I'm saying?--- Yes, I can see what you're saying.

Okay. And then turn over the page, please. You see constitutional discussion there. And this is an interesting part, the third paragraph down under constitutional  
10 discussion. Mr Lette also canvassed the proposition that the new control body should have an independent chairman, and the issue was discussed at length. Do you recall how Mr Bentley came out of the box on that one?--- He was very non-supportive of that.

15 Yeah. In other words, he was saying, "What about me?". Okay?--- Well, as I think Kerry Watson was because I don't think she was supportive of that – that position.

Okay. Look two paragraphs down. "Mr Bentley advised that the notion of seeking an independent chairman from outside the industry is a ridiculous proposition. The racing industry, of necessity, is an animal of its own creation. And to be effective,  
20 the chairman must have an in depth knowledge of the racing industry to make the board and organisation cohesive. And with the amount of change necessary, educating a chairman from outside the industry would be counterproductive." And then if you go to page 3, the second new paragraph. "Mr Bentley advised Mr Lette  
25 that there was no rationale or reason for harness and greyhounds to have two directors each." So he's pretty strong in this meeting, Mr Bentley; wasn't he?--- He was strong on this point from the very beginning.

30 And the beautiful part was he had you behind him so he could smash any opposition views, you see; couldn't he? Smash them because you weren't going to give them money unless they went this way?--- When you say he had - - -

He had you?--- I - - -

35 Yeah, you were helping him. Because you were the one who was saying, "You're not getting the money unless" – just looking at page 1 – "unless the government is assured that there is adequate and stable industry governance, and the funds would be invested commercially to sustain industry." So when you're sitting at that meeting with Bentley and the others, we know from the background we've been through that  
40 this is Mr Bentley's idea, all this stuff. That there be the amalgamation, it's his idea. And that he be chairman of it. And they have a longer term for stability. That's his line. And, you see - - -?--- Yes.

45 - - - where do you go if you're the other people, if you're not Bentley. Where do you go? Poor old Lette and poor old Watson are going, "Whoa, no money unless we go with this." That's the point I'm trying to make?--- The amalgamation of the three control bodies was clearly the preferred outcome coming from the very – it was

made clear to the three chairs at that – I think it was the 18<sup>th</sup> December meeting, pre-  
this one.

5 But the funny thing, you see, about it is the government said they wouldn't do it  
unless there were three yeses from the chairmen?--- Yes, that's right.

That's right. Now, you think about it a little bit. If you've got the government  
saying no money unless yes, it's a bit hard to say no, don't you think?---I – I – I  
10 don't step back from the position that from that meeting of the 18<sup>th</sup> there was a very  
firm view from the government that they should be an amalgamation.

Yes. Yes, that's right. But the proposition to get the yeses was about no money if no  
amalgamation. That's my point?---Yes. I – I'd accept that, yes.

15 Okay, good. And look how it was got. This is really quite amazing, Mr Kelly. I'm  
asking you to comment please – top right hand corner, page 4? Have a look at this  
part? I don't know why the word agree is there but anyway underneath it, “Albion  
Park Harness. Significant discussions initiated by Mr Lette on the issue of Albion  
Park being sold and the codes merged ensue. The chairman advised” – the chairman  
20 I think is Mr Bentley of course, isn't it?---Yes. I would read it that way, yes.

Yeah, okay. “Mr Bentley advised that this has never been discussed at any board  
meeting of the thoroughbred code and he would be prepared to advise the minister at  
the 4<sup>th</sup> January meeting that there is no agenda to sell Albion. In addition, a new  
25 control body would give a commitment to allocate up to \$14 million to a maximum  
of \$18 million on infrastructure at Albion from the proposed funding package.”  
Smokes. What he's doing is he's getting Mr Lette on board, isn't he?---That was one  
of, from recollection, one of Bob Lette's key issues, yes, was the future of Albion  
Park.

30 But he was buying Bob Lette's vote of yes, you see, by giving him that assurance,  
wasn't he?---Well.

35 Don't you think he was? Isn't that plain as day. How else could you see it please,  
Mr Kelly?---On – on – on – on the words there, yes, you could say that. I don't feel  
comfortable saying what Mr Lette thought, whether he - - -

Well, don't worry about what he thought. I'm just saying, looking at it the way it  
was done with the government, namely you there, saying no money unless we get  
40 three yeses to the amalgamation and Mr Harness, Bob Lette, says in effect, I'm  
frightened of saying yes because if I am then I only have one vote in a board that's  
got a lot more votes than one going the other way. So I need an assurance that I'm  
not going to be marginalised. And what Bentley says back to him is don't worry,  
Albion's yours. You can have \$14 million to do it up. It's fantastic?---Yes, okay.  
45 Accept that, yes.

You see my point?---Yes. I see your point.

5 Have a look at Watson, below in greyhound, “Ms Watson looked for further assurance on the proposed loading complex and a similar commitment was given that provided the project received all necessary construction and building approval from council and the state government then the new control body would allocate up to \$10 million from the proposed government funding. I note if the funding model is less than \$100 million, a pro-rata reduction.” That’s pretty good commitment. She’s done well there, don’t you think?---I – there was money specifically – I mean I know the Logan issue inside out.

10 Well, forget all that stuff. She’s done pretty well there for the beautiful greyhound people, hasn’t she?---Yes.

15 Because she says, if I vote yes they’re going to love it that I’ve got Logan. See, that’s right, isn’t it? And they’ve got – she’s also got Mr Witness, the government guy you there hearing it?---Yes.

20 So you’re hearing Bentley say, “It’s not formed yet, the amalgamated body, but when it does I’ll give you my personal commitment that it’ll be done this way”, isn’t it?---Yes. That’s what he’s suggesting to them.

25 And the same with lovely Mr Lette – he’s in the [indistinct] He’s buying – Bentley’s buying his vote so that he’s just going to be in the corner but he doesn’t mind because he’s got his assurance about Albion so he’s done a great job for his code. See what I mean?---Yes.

30 Okay. So going forward from there, what’s really interesting about it – do you recall what happened was eventually Ms Watson – let me go back one. I just wanted to show you two letters that were written to you. One letter written to you, one to the minister. Would you go to 119 please?---This is the greyhound letter?

35 Yeah. This is 119. This is 31<sup>st</sup> December soon after the meeting. This is to you, “Dear Mike, Proposed integrated control body. I wish to advise that the Greyhound Queensland board of directors supports in principle the formation of one control body to govern the racing industry and provided there are adequate safeguards in place for the minor codes, appropriate employment guarantees are agreed covering all existing control body staff and that the present business plans for greyhound can still be implemented.” So she’s making it pretty clear. She’s putting it on the line. Don’t you think she is?---Yes.

40 Okay. And then 127. If you don’t mind going to 127 please. She writes to the minister but cc’s you and says this, “Greyhound Queensland supports fully the integration of the control body as specified providing the safeguards are as previously outlined in correspondence and minutes are honoured.” So that’s sort of conditional, would you think?---Yes. That’s conditional, yes.

45 But as life unfolded she got smashed on that, didn’t she?---As I’m aware, yeah.

And harness got smashed too, didn't they?---They didn't get the - - -

Assurances?--- - - - commitments that was provided there, no.

5 They didn't get anything in accordance with the assurances, did they?---No.

Did you support them when Bentley tried to roll over the top of them on these things? Mr Kelly, did you support?---I believe I did. I'm - I - - -

10 I don't think you did, Mr Kelly. You didn't support them at all. I'll show you what you did. You didn't support either of them even though you were a party to giving them the assurances by sitting there listening to what Bentley said. I'll show you what happened?---Okay.

15 What happened was: Bentley came to government. I'll show you the meetings. He started to come to the government with the plan on the 18<sup>th</sup> of August 2010 after he had developed it with staff within - starting in Queensland Racing, the thoroughbred board. But continuing for Racing Queensland after the 1<sup>st</sup> of July 2010 he came to government with a plan and he laid it on the table as if it was the plan of Racing  
20 Queensland because it had RQL on it?---Yes.

But the board didn't know about it. The board didn't find out about it until the 24<sup>th</sup> of September. And when they found out about it, it revealed that harness was going to lose Albion?---Yes.

25 And that Logan was going to get - was off the page too - the two things they'd been assured. See what I mean?---Yes.

30 And what happened was Watson wrote you a letter and wrote it to the minister and to Bentley and said help. Bang, she got knocked off the board. She got removed from the board. Can you believe that?---Yes, I'm aware of - - -

Isn't that amazing. Isn't that an amazing way to treat somebody who - - -

35 MR MacSPORRAN: Commissioner? Could we have less comment and more questions?

COMMISSIONER WHITE: Mr MacSporran. Noted.

40 MR BELL: Mr Kelly, when you received - do you know the letter I'm talking about?---I have seen a copy, I believe.

45 Okay. We should go to it. Let me take you to it at tab 188 please. It'll be in the next folder. Folder 5. You can see that this was a letter that she wrote to Mr Bentley and you'll see the cc at the bottom. It goes to the minister and to you too?---Yes, I do.

5 The part I'm interested in you see is, in the first paragraph, she says, "I wish to address", meaning to Mr Bentley, but also notifying you of this. "I wish to address with you some issues that are causing me concern with the strategic asset plan that was presented to the directors of Racing Queensland on the 24<sup>th</sup> of September. This document was prepared with no input from myself at all with regard to the greyhound racing industry." Does that – would that have caused you some concern as the director of the Office of Racing that one of the board members didn't know of the development of the plan that had already been with government since August?---If I had've got this letter on the 30<sup>th</sup> of October, probably yes.

10 Well, did you get it on the 30<sup>th</sup> of October?---No, I didn't, Mr Bell.

You didn't get a copy of this letter?---I don't believe so. Not – not on the 30<sup>th</sup> of October, no.

15 Well – okay. What about the 1<sup>st</sup> of November? What are you saying to me? It looks like it's cc'd to you, you see, is my point?---Yeah, but I was – I was on long service leave between - - -

20 Okay. Fair enough. When you got back from long service leave, did you come to know that Watson had been removed from the board of Racing Queensland?---Yeah, I – I knew it was going on even while I was on leave.

25 Okay. And did you know why it was that she got removed?---When I – when I came back, yes, I - - -

Okay. It was because of this letter, you see?---Yes. I'm aware – I'm aware of that, yes.

30 Okay. So did you investigate that? How that could possibly be so, that she's writing to Bentley, the Minister and you about her position?---No, I didn't investigate that.

35 Okay. And the second paragraph of her letter: "I wish to draw your attention to the letter I wrote to Mike Kelly on the 31<sup>st</sup> of December – copy attached – which supports in principle the formation of one control body to govern the racing industry in Queensland. I would also draw your attention to the various email exchanges between myself and Tony Hanmer regarding the promises for the Logan complex being completed if I sent the treasurer the letter agreeing to the amalgamation." And then the last two paragraphs on the page: "The board of Greyhounds Queensland  
40 decided to support the amalgamation of the three codes into one control body after much deliberation, but namely because we believed that we had an ironclad promise in writing that the Logan facility was guaranteed to proceed. As I have stated at the board meeting of the 28<sup>th</sup> of September '10, I have no problems with the strategic asset plan in general, but I do think it is in the best interests of Greyhound to do away  
45 with the Logan complex and replace it with Deagon for all the reason I have previously addressed with you, the least of which is that it is on the wrong side of town and the greyhound industry deserves the chance to prove what it can produce

with a stand-alone venue for the first time ever in Queensland.” So in a very gentle way, do you think, she was seeking help from you and the Minister?---Yes.

5 And you didn’t give her any help, Mr Kelly?---No, I don’t believe there was any intervention from government at all on this – the whole issue of what was going on, on the board.

10 I think the point I’m asking you to comment on is this: the point is that you were a party to the commitment that Mr Bentley gave back in December at the three chairs meeting. She gave away – you knew she gave away her only power by putting her hand up and saying yes, but she did it on conditions that you knew about, and here she is, complaining about it again. Did you consider, when you eventually read this letter, that Racing Queensland was still a fit company to be the control body of the three codes, in operating in that way?---Not in – in detail, no.

15 Well, why the words “in detail”? What does that mean?---Well, I didn’t sit down and go through an assessment process of was Racing Queensland fit to manage the code of racing, no.

20 Well, may I suggest to you that that was neglecting your duty under the legislation?---Mr Bell, there’s – and this issue has arisen a couple of times in the last little time we’ve been talking. There’s more to managing the code of racing than – than this issue or another issue. I mean, I’d like – I’d like to talk about the EI crisis that closed Queensland down and the response that was done to that. That’s a pretty  
25 important aspect of managing a code of racing: licensing people, making sure that people have occupational licensing and they’re fit and safe to do their job, and you’re not putting unqualified people in charge of racing animals and getting them killed all over the state. I mean, we have, unfortunately, half a dozen people killed a year on racecourses. There needs to be some safeguards. There’s – there’s more to fit and  
30 proper to manage a code of racing than just identifying a particular issue, and I – I accept shortcomings. I’m not trying to step away from that, but every time an issue arose where Racing Queensland or any other control body didn’t do something according to Hoyle, it didn’t immediately call into question in my mind, are they fit to be a control body and manage the code? They were doing a lot of very good  
35 operational things with – and I can’t explain it in another way.

No. I understand. I understand. There is an element of unfairness about an inquiry like this that looks back and picks just certain parts out. I understand what you’re saying?---I mean, the – the – EI had never hit anywhere in Australia before, and the  
40 response of the government and the two equine control bodies, I think, is recognised as being world-class. It was fantastic.

Yes. I saw that?---And, I mean, the office of the gene regulator came in and did an audit. I mean, they got, with government assistance, approval to use an untested  
45 vaccine. It’s unheard of, and the safeguards that had to be put around that to make sure it was done properly and not get out into the population and – but nobody seems – I mean, I’m sorry to be taking up time talking about those things, but I - - -

No, no. I understand your frustration. I do. And you take up the time. That's fair?---I mean, there's - - -

5 COMMISSIONER WHITE: Even the detractors, I think, of the administration at Racing Queensland, from what I've read, admitted that it was a very good response to the equine influenza crisis?---Thank you, Commissioner.

MR MacSPORRAN: Commissioner, is that a convenient time? I notice we're over the usual break time.

10 COMMISSIONER WHITE: We are, indeed. I was waiting until we got to a suitable time, Mr MacSporran, and I suspect, with all of these pronouncements, we probably have. Thank you. We'll take a quarter of an hour break.

15 **THE COMMISSION ADJOURNED** [11.41 am]

20 **THE COMMISSION RESUMED** [11.56 am]

**MICHAEL ANTHONY KELLY, CONTINUING**

25 **EXAMINATION BY MR BELL**

COMMISSIONER WHITE: Yes, Mr Bell.

30 MR BELL: Mr Kelly, I've just got one topic I just wanted to go through and then I'm finished. Would you mind going to folder 4, please, document 137. Mr Kelly, you'll see there's an authority to prepare dated 22<sup>nd</sup> February 2010?---This is the – the final cabinet decision.

35 Yes, please?---Yes.

And then you see – at the back of it you see the policy submission – authority to prepare?---Yes.

40 And this document, that is, the authority to prepare document or the policy submission, came out of the Office of Racing?---Well, drafts of it would've. The – the authority - - -

45 Drafts?--- - - - to prepare submission comes out of the department.

Okay?---With input from just about every agency across government who's relevant.

Okay. Could you go to page 10 of it, please. You see paragraph 44 under the heading Consultation?---Yes. I do.

5 And then first subheading is Community. Paragraph 44: “It is not proposed to undertake any community consultation”?---Yes. I see that.

And then over on page 11, Results of Consultation, and the heading is Industry. And then if you go paragraph 53, Potential Criticisms, – paragraph 53 of the first paragraph under it?---Yes.

10 “It is anticipated that there will be criticism particularly from Brisbane Racing Club, Mr Bill Carter is the thoroughbred code and Ms Stephanie Horton in the greyhound code. When the content of the constitution of the new control body becomes public knowledge, criticism is likely to focus on the membership of the new control body as the current class A members, clubs and other licensees are not members of the new control body.” And I think the idea of going for community consultation was not – start again. There was no community consultation, was there, in relation to the amalgamation?---Not that I’m aware of, Mr Bell. No.

20 And in particular in relation to the industry, the anticipation was because of what is reflected in paragraph 53, that is, that there was going to be criticism of the idea of the amalgamation?---Short – short answer to that, Mr Bell, is – is yes. Do you want me to elaborate?

25 No. You go?---I think the view within government, when the decision to amalgamate the control bodies had already been taken – and going to consultation and getting a range of views or whether it was a good idea or a bad idea or variations to it – I don’t think there – it was seen that that was – was going to change the decision to – to amalgamate.

30 Yes. The thought of having consultation with the industry or community was something that the Office of Racing was advancing from an early time - - -?---I’m – I’m sorry, Mr - - -

35 Yeah. That’s okay. The thought of community consultation or industry consultation before the amalgamation took place by legislation was something which the Office of Racing advanced should not happen?---I’d agree with that. Yes.

40 And would you go to this document, please, that I have open, which is 132 in folder number 4, please?---Cabinet briefing note – this one?

Yes, please?---Yes.

45 The action officer, looking at the foot of the page, is Nick Lindsay?---Yes.

And Premier and Cabinet is his department, I think, isn’t it?---Yes. That would be right.



5<sup>th</sup> of February – and he is addressing Minister Lawlor in relation to the amalgamation by way of the legislation amendment?---No. I think this would be the briefing note for the premier, and Minister Lawlor’s name would be there as the responsible Minister.

5

Yes. Thank you. And what I’m looking at is – for your comment – you see paragraph 5 in this briefing paper: “Controversy is likely over the proposed removal of current provisions that establish country racing associations and Queensland Country Racing Committee”?---Yes.

10

And then in paragraph 10: “No stakeholder consultation has been undertaken on the reforms outside the existing three control bodies and none is proposed prior to the legislation being introduced”?---Yes.

15

And then the next heading – just looking at paragraph 12: “However, there are serious concerns over the lack of consultation, impact on regional groups and the removal of guaranteed funding allocations to the smaller bodies.” 13: “The final submission needs to make strong arguments in support of the proposed corporate governance model as opposed to the existing industry representative model. Explain how additional ministerial powers would be sufficient to ensure equitable treatment of the minor codes in the absence of an inter-code agreement. Clarify the intention of the new body to create advisory bodies to replace the existing country racing advisory bodies and discuss expected community reactions”?---Yes.

20

25

And under the recommendation, you see Lindsay says that the submission be supported subject to the provision of additional information in detailed – and I’ll leave you with that, because I don’t have the second page?---Okay.

30

So there was, during this period leading up to the introduction of the legislation for amalgamation, driven by the Department of Premier and Cabinet, for serious consideration be given to industry consultation. Can you recall that?---Yes. I think the matter was raised by either Nick Lindsay or probably Justin Murphy at that level.

35

Okay. And I’ve got the correspondence here. Let me just show you some of it and see if it helps you refresh your memory. At 133, the next document, please, you’ll see that in about point 25 of the page, just a quarter of the way down, you see Nick Lindsay writing to Carol Perrett and Justin Murphy re Racing Submission – 9<sup>th</sup> of February ’10?---Yes.

40

“Carol, have not received the signed-off brief back from our ADG, but I think it is unlikely to change.” And then if you don’t mind going to the second dot point:

45

“However, there are serious concerns over the lack of consultation, impact on regional groups and the removal of guaranteed funding allocations to the smaller bodies.” And this mantra seems to flow through. I’ll just show you 135, please. 17 February now from Lindsay again, in paragraph 12 at the foot of the page: “Consequently DPC remains concerned about the lack of consultation, particularly in relation to moving from an industry representative governance model to a corporate

model and the removal of guaranteed TAB revenue to minor codes.

Recommendation: support subject to close consultation DPC and treasury to finalise amendments”?---Yes.

5 And then 140, please, Mr Kelly. He writes – Nick Lindsay seems to write to Carol Perrett on the 17<sup>th</sup> of March, I think?---Yes.

“Pending receipt of your Minister’s letter and premier’s subsequent response, my main thought at this stage relates to consultation. Are you proposing a consultation process outside of debate in parliament?” And one line down: “Generally, it is best to consult. If you do not intend to do so, then you should really explain why, eg, consultation has generally occurred with industry over the years and it is not expected that any benefit will be gained from further consultation,” for example. So Lindsay seems to continue to agitate to some extent for this. And if you go over to 10 141, please, you see that Carol writes back on the 19<sup>th</sup> of March at 3.30 and she attaches the latest version of the cabinet submission with attachments?---Yes.

And then the third paragraph down in the second line: “Attached is a letter from Cooper Grace and Ward which explains why the directors need to stay in office until 20 conclusion of the AGM”?---Yes.

And she writes back – I’m sorry. And then at the top of the page you see Lindsay writes back with the same question in the second paragraph: “Can you say anything more about the consultation issue?” So he seems to keep pounding this thing a bit, 25 doesn’t he?---Yes. I’d – I’d agree with that.

And then if you go to the next document at 142, please, Carol Perrett writes back to him and includes you in the email. “In relation to the consultation issue, it is proposed to include” – and I think she means in the briefing; doesn’t she?--- Sorry, I 30 was - - -

Yeah, that’s okay. In – she’s writing back - - -?--- It is proposed to include – that would be in the cabinet submissions.

35 Cabinet submissions?--- Yes.

It’s got inverted commas around it. So the first part of it, “Consultation has been undertaken with the chairs and the chief executive officers of Queensland Racing, harness, greyhound. No other community or industry consultation was undertaken. 40 Ongoing consultation with country racing associations and Queensland Country Racing Committee that will be established under the constitution of Racing Queensland will be undertaken by Racing Queensland.” And then she says, “It is not” – she proposes, “It is not intended to undertake further consultation as it is unlikely that any new issues would be identified.” I won’t go on and on and keep 45 reading it all. And then in the last paragraph of her proposal, “In relation to the constitution and the best interests of the code issue, any changes to the constitution to protect the smaller codes is contrary to the purpose of the reform. So bottom line is

5 that the control body's expected to act commercially and make commercial decisions for the benefit of the entire Queensland racing industry. This matter was made expressly clear by the minister when he briefed his ministerial committee on 23 March, has been the focus of long discussion with Treasury and cabinet." And about 153, I'm sorry to take you to, mister – 143, I'm sorry. 143. And on the 29<sup>th</sup> of March, just going through the chronology, you see at the bottom the heading, "Department of the Premier and Cabinet Position." Paragraph 14, "DPC remains concerned about the lack of proposed stakeholder consultation." 16 – paragraph 16, 10 "However, it is unclear how the proposed constitution will adequately ensure the welfare of the minor codes." And then I think – I'm just trying to demonstrate the theme that seemed to run between the departments. And then in 144, Carol Perrett writes back to him and includes you. In the first line, "We are still working on the consultation issue and we'll have that to you later today." And in 145, please. You see then she provides a draft under the heading "Consultation" to him. And I'll just 15 let you read in 2, "There has been extensive consultation undertaken with stakeholders in the wider Queensland racing industry over a number of years in relation to the structure and effective operation of an industry facing increased competition."?--- Yes.

20 And so that sort of – that's saying, "Yes, there's not going to be – there's no need for any more because it's already happened" in a way; isn't it?--- In a way, yes. Industry reform had been going on since two thousand and – or even '99.

25 Earlier?--- And there'd been issue papers and – so I believe that's what it's referring to, is - - -

30 Okay. Then in paragraph 3, "It is not intended to undertake further consultation beyond the chairs and the chief executives and so on. Based on the outcomes of previous consultation on industry governance reforms, it is likely that many stakeholders would continue to represent and argue their own personal club association interests and raise a range of unrelated issues." And that's something I've seen Mr Bentley advance often through the correspondence, in reading the documents from the control bodies. And that seems to be a position that was, at least by this time, accepted by the office?--- Well, I think by this time it was a position 35 that was accepted by government, not just the office.

40 Okay, very good. And then if you go over to 148, please, so in the new folder. And then the cabinet decision on the front on the 12<sup>th</sup> of April you see with the attached authority to introduce?--- Yes.

Signed by Minister Lawlor on the 7<sup>th</sup> of April. And as you will appreciate, the position in relation to consultation is reflected in this document as it was advanced on the way through, at least from the office?--- I would accept that.

45 Okay. And then I'll just get you quickly to look at – I've got to go back to the other bundle just to show you this point, ask you to comment. And then in 146, please. In

146 I see an email from you, 31 March '10 from Mike Kelly to Nicholas Lindsay and cc Carol Perrett and other people?--- Yes.

5 “Nick, if you cannot identify actual concerns then how can they be addressed? You seem to have some concept in mind but don’t know what. There is no intention to provide equitable funding to any codes. Fund goes to the one control body, not a code. Are you suggesting that each code get a 33.3 per cent of revenue? Because that is what equitable funding means. We can waste no more time on this.” I think you’d accept, would you not, that equitable doesn’t mean equal; does it?--- Well, Mr Bell, I’d like to refer to the email that I’m actually responding to.

15 Please, you do that?--- Where Mr Lindsay is coming back with our concerns on this matter remain. I don’t have any specific blues to offer, but I was thinking about the best” – I mean it’s – we’re at the stage now – and looking at it clinically in this environment, I can understand why it might be not clear. But there are very firm timeframes that apply to - - -

20 Yes?--- To lodging these things. And we’re coming really up against the wire here about having to get something into a position that’s – at least if not agreed, people’s different views are reflected in the various briefing notes before it can get to cabinet. And I mean, the idea of the amalgamation of the control bodies was not about having three separate old control bodies and bashing them together under an amalgamated model. It was to be one control body for the Queensland racing industry. And the expectation, as I understand it, was – was that resources and funding priorities and allocations would shift between the various codes under that control body model.

25 Yes, I understand?--- What I think I’m becoming quite frustrated at by this stage is Mr Lindsay’s lack of understanding of what the structural reform was about, and about still maintaining the three separate control body structures. That somehow having an overarching – which isn’t what it was about.

30 Yeah?--- And the concerns that are – continue to being raised are unspecific, and that’s the theme of the – I’ve got concerns about this but I can’t really tell you what they are. Well, that’s where I said – I got to the end of being able to try to address these and I think our office has. And that’s where I escalated it to my boss and into the Ministerial advisory area, and for them to look at it at their level.

35 Yes. Well, the point I’m trying to make, I think, is that leading up to the legislation change – and in a minute I’ll show you the constitution being accepted. It was very much a case that there had been the consultation with the three chairs that I referred to you earlier in December. You remember the minute?--- And the chief executives, yes.

40 And the chief executives. And it seemed as if the resolution for the two minor codes was given toward consenting to an amalgamation. But it was based upon protection that they thought they had. You know what I mean?--- Yes, I know what you mean. Yes.

5 And by not having community consultation leading up to the amalgamation being done by legislation, it tends to put those minor codes in a position of having to rely more on those assurances that they had. Because if it had gone out to the industry, people in greyhounds maybe would've seen it for what it really was. That is, you couldn't have any assurances because the government wasn't giving any. And maybe that consent would never have been given. Do you see my point?--- I see your point, yes.

10 And by you – your office having a view that consultation was unnecessary, it created, I suppose, heavy reliance by those two minor codes on those assurances that they had been given. Otherwise they were going to get crushed, you see?--- Mr Bell, I understand what – what you're saying about referring to my office.

15 Yeah?--- Cabinet submission doesn't come out of my office.

No, that's right. But you participate in it - - -?--- Oh, certainly.

20 - - - and you're the expert in racing. You particularly because of your seniority and your being there since 2003. You know the issues?--- Yes. Yes. I'm not – I'm not stepping back from that. We have a large input to it but I don't write a cabinet submission and then it suddenly - - -

Goes through?--- Goes through and the next thing cabinet's approved it.

25 I understand?--- I mean, there's a whole process around this. And this issue of consultation or understandings of minor codes about what commitments had been given and what have it, that was all ventilated. The – everyone was aware of those issues.

30 COMMISSIONER WHITE: Now, Mr Kelly, one of the issues that Mr Lindsay seems to be pursuing is the – it really can only be called the motherhood statement – the higher-order statement of the best interests of racing as a whole, and I think he was trying to pin that down to mean something - - -?---Okay, Commissioner.

35 - - - rather than – I mean, that's the impression that I get from here, and he's getting a fair bit of push-back from that. And that, surely, was a valid concern because the three codes didn't disappear with the amalgamation?---No. No, they still - - -

40 You didn't have dogs running on the horse track and all of that sort of thing. They were still there, and they still had their constituent clubs and bodies - - -?---Yes.

- - - even though they had no voice. I think they're issues that he was ventilating - - -?---Okay, Commissioner.

45 - - - if I read him correctly.

MR BELL: Let me just demonstrate that. If you go to 138 please, Mr Kelly. In 138, what you have is an email from Carol Perrett of the 5<sup>th</sup> of March, attaching – I’m sorry. Start again. On the 5<sup>th</sup> of March, it seems that David Grace sends an email – I’m sorry. Start again. Carol sends – Carol Perrett sends an email to  
5 Mr Grace which she cc’s to Mr Bentley on the 5<sup>th</sup> of March, and she attaches an outline of amendments that are required to be made to the draft constitution?---Yes.

You okay? And then if you go over to the attachment over the page, if you look at the third dot point, it says, “Amendments to the Constitution of Racing Queensland.  
10 In making this – in making decisions, the control body is to have regard to the best interests of thoroughbred, harness, greyhound codes as a whole and the continued existence and welfare of each individual code.” You see that?---Yes, I see that.

Well, that’s all very well, one would think, and the idea is very good, and I see the  
15 point, but if you go to 139, you see this is a diary note of Mr Grace’s of a meeting which you were at with Lara Dawson and Carol Perrett on the 11<sup>th</sup> of March. “In the meeting we discussed the five items of the document Amendments to the Constitution of Racing Queensland, summarised those.” Go to the third dot point. The third dot point agreed “This is intended to be a motherhood statement, and there  
20 is no further significance than that.” That’s the point, I think, Mr Lindsay was about. Do you know? Because what is being said in front of you, by you or by somebody, in explaining the changes required in the constitution – they define it as a motherhood statement. What do you think that means?---Well, I know what it means, but - - -

25 What does it mean?---That it’s just a statement that’s just said for the purposes of having some words there.

Yes. That’s the point, I think, isn’t it, the Commissioner was making just before?  
30 That’s what Lindsay was worried about?---But, Mr Bell, this may be David Grace’s file note. I don’t necessarily subscribe - - -

No. That’s right. You don’t. But it looks like if, as the commission is looking at – somebody had a diary note of a discussion. I see back that there’s an email that  
35 Carol sends and that Mr Bentley receives, and then I see there’s a meeting that he records you at and Carol at, and it looks like he’s talked about the very points that are referred to as the proposed amendments, and one is explained as being a motherhood statement, the one that Lindsay is pushing for – you know, the concern he’s pushing for?---I accept that that’s his – that’s his interpretation – his words.

40 Of what was said at the meeting?---Yes.

Yes. But the people who were speaking on what it was must have been you or Carol, you see?---I – and I am very – I – I do not use terminology like a motherhood  
45 statement, so that would not be my - - -

5 Okay. Well, if somebody said it, it doesn't look like it, if you just take this diary note – as if somebody was saying, “This is really important. You know, we've got to give protection to these minor codes.” It's really saying the opposite: “Mr Bentley is the king, you know, and he'll do all the right things by everybody,” in effect, you know, “But we've got to put this silly thing in the constitution that doesn't mean anything.” That's what it looks like when one is looking at it later, Mr Kelly?---I can understand that. I can't – I can't make a valid comment on Grace's note.

10 Okay. See, the problem is exactly that the anticipation – sorry. Start again. Mr Lindsay anticipated that there might be problems going forward, having an amalgamated body, because two codes – minor, yes, in terms of wagering – would only have two votes, but the third code would have four, so they couldn't win anything. Do you know what I mean?---I – I do. I know exactly what you mean, Mr Bell, but you're starting from the proposition that there's still – even though  
15 they're a separate code, that the control body was really just an amalgamation of the three former control bodies, and they were still going to have their individual constituencies, and that was not the intention of the amalgamation.

20 No. I know. But bearing in mind that you, particularly you, were involved in the development of the thought of an amalgamation and whether or not it was a good idea for all codes of racing, you knew that the two minor codes were going to be in a predicament of having two votes, and thoroughbreds four. Unless those people, those four, took into account appropriately the best interests of thoroughbred – of harness equally with greyhounds, it wouldn't work well?---In the best will in the  
25 world of having the amalgamated control body, that very situation could arise. People could flip back to past allegiances or history or whatever. One of the earlier proposals was to actually try to deal with that issue in – in legislation. That didn't – that - - -

30 Well, that may be so, but what was promoted and what was achieved by Mr Bentley was to have the amalgamation take place, and it blew up in the sense, for the two minor codes, they ended up in litigation because they believed they'd had assurances?---Yes.

35 And that really – the proof is in the pudding, isn't it? It didn't really work well?---Well, that was the outcome. It did – it was a poor outcome from that perspective, yes.

40 Okay. Now, for the future, is your view that it can possibly work to have an amalgamation of the three having - - -?---I – I think it can, and I think it - - -

45 Wouldn't it be important or sensible to not accept what Mr Bentley had said earlier and, in fact, have an independent chairman, not one from thoroughbreds, for example? That would have been a good idea, wouldn't it?---It – it's – companies with independent chairs: they – they bring strengths and weaknesses. I mean, I can see the benefit in having an independent chair if you go completely outside of the racing industry and pick someone from the commercial world, say.

5 COMMISSIONER WHITE: That's what happened with the inaugural chair of the TAB, wasn't it? That was then Mr Switkowski, who was totally outside the racing world, and at the time everyone was surprised. They thought it would be a racing person but agreed that it was a great success?---Yes. So - - -

If you're going to use a commercial model – you see, there's this mantra about getting away from the clubs and the interests, but that's not really what happened, it seems to me. It didn't do that. After all, Mr Ludwig was a member of two clubs?---Yes, I think - - -

10 QTC - - -?---I think - - -

- - - as well as the Brisbane Amateur Turf Club?---Most of the members of all the control bodies have been members of clubs at various stage.

15 So I just would be interested in your reflections, having been there for so long – just what you must have reflected upon would work best for this industry?---It – it's – the commercial aspects of the industry moving forward – don't get me wrong. The regulatory aspects of it are very important.

20 They are, indeed?---But you - - -

Essential?---But you can employ staff with the appropriate skills to do that so long as they're managed, and that can happen. Moving forward, for the Australian racing industry, the commercial issues that are biting now – you need people with very strong commercial acumen to deal with the changes that are happening in wagering and gaming and – and, I mean, five years ago you couldn't place a bet, sitting at home, on your TV. Now you can. I mean, the traditional models no – no longer work, in my humble opinion. And they're – they're real challenges moving forward. But I temper that with saying you need a mix of skills on that board so that people still understand what it means to put a racing meeting on and what – and so you're not – you're not cannibalising your race meetings by putting them in – too many in the right – in the wrong places and they're drawing the same suite of horses. You need people on – on – involved who understand the chain of production from breeding right through to, as it's becoming more important now, post-racing with animal welfare and what happens to animals when they exit the industry. And so there's a – there's a mix of skills and experiences. A lot of it can be – can be bought and employed as – as staff but I think you also need an understanding of those issues at the board level. I mean that's.

40 Mr Kelly, finally would you go to folder 6 please. I'm going to be very quick on this. The tab is 230 please.

45 COMMISSIONER WHITE: Was that 230, Mr Bell?

MR BELL: 230 please, Commissioner. We haven't talked at all very much, Mr Kelly, about the business cases and the development of the infrastructure plan and it



seems quite plain that what happened – that was that the Office of Racing worked with Racing Queensland to try and get it in shape so Treasury could judge whether or not they were sufficiently detailed to approve a payment?---Yes.

5 And I understand that. I understand your position on that. I'm just going to ask you to help me understand this please, at that time – at about that time. What I'm talking – 14 February 2012 there's an email here from you to Carol Perrett with an attachment, RQL to Minister. And then if you turn it over you'll see the attachment. It's a draft letter to the minister in relation to the business – to a business  
10 case?---Yes, okay, yes.

Now, this – this draft letter originates it seems from your office, from you?---It may, yes.

15 Okay. And then 231 please, if you go over to that. You'll see you send RQL to Minister and when you look at the second page you'll see it's the same document. On the 14<sup>th</sup> at 2.50 you send it to Mr Bentley at his private address, crosmore13. But he uses it all the time – nothing in that. Do you see that?---Yes, yes.

20 So – and then if you go to 231A, you see Debbie Toohey from Racing Queensland?---Yes.

Sends back to you, the 14<sup>th</sup>, “please see letter attached from Bob Bentley, chairman.” That was emailed to the honourable Tim Mulherin. And then if you look at it you'll  
25 see it's the final letter?---Almost the same letter, yes.

Final letter in the form that came from you as the draft?---Yep.

Was that a role that you thought was appropriate for the regulator, for the office, to  
30 help him draft letters to the minister?---Well, I – I thought it was in this case because there was a concern being raised about the ongoing support or subsidy or ability for Racing Queensland to underwrite certain activities from the business scope. Can't remember now exactly. And government wanted from RQL a letter to that effect that they could do it. With the – with the greatest respect to Mr Bentley, whatever he  
35 would've written in wouldn't have answered the question so it was a way of saying, not – this is what you need – you – you - - -

“This is what you need to say because you're not very good at saying it.” I know and that's what happened with the business cases too. Carol, the office, helped draft  
40 them so that they were in a state that Treasury would take them seriously?---But always having put the responsibility back on them to – like with the Bentley letter. I mean he – he had to sign it. He had to be sure - - -

No. I understand?--- - - - to commit to that but it was to – to get what he was saying  
45 verbally actually down.

Yeah. You see, I suppose and I understand your point. You saw as one of your roles that it was appropriate to, in this case, draft the appropriate language for Mr Bentley to put a position to the minister. That's what you saw there as appropriate?---Yes, yes.

5

And it seems from what the commission has been delivered that in business case it's the same. Carol Perrett, for example in particular helped very much in drafting them up into a form that was appropriate?---There would be many drafts of the business cases.

10

Back and forward between the office?---Yes.

And the office in fact playing quite a substantial role in getting it right?---Well, trying to get it into a format where it could be assessed.

15

Okay. Now, finally, that role that was undertaken by the office in respect of assisting Racing Queensland in communications with the government – was that a role that you saw as appropriate for the office as a regulator?---Yes. Our – our regulatory function was part of our role, Mr Bell, but there was a lot of working with the control body on – on non-regulatory issues. As – as part of industry development like the EI – EI marketing campaign after the EI crisis where money was committed to that. We – we did a lot of work with – with harness and thoroughbred control, particularly thoroughbred who, to develop that – to get it to a stage where it - - -

20

25 Yes. I understand that point. I suppose, so you can comment, I was a little surprised – I was because I'm not as experienced as you and I'm asking for your help – I was a little surprised to see that a member of the Office of Racing, the director for example, might draft a letter for one of those that he was supposed to be regulating. Do you know what I mean – that dynamic? And I just didn't get that. But you feel that I'm  
30 wrong in not getting that and it is one of the roles, is it, to draft letters to the minister, for example?---Well, for – in – in – in this instance I think it was because we'd been taught – not just to Bentley but to Mal Tuttle and Paul Brennan and all the people that are involved in the business cases and what was – was the requirement about the commitment that Racing Queensland was prepared to give – that – they – that – they were going to do that and they were doing it. And they – they support all clubs. But  
35 it was getting it – it was helping them to put it into – into the right words rather than another seven page letter that came in that didn't address the issue.

35

Yes, I see. Well, in a sense I suppose another view of that is this: that you knew that  
40 whatever capabilities they had within Racing Queensland, they didn't have sufficient capability to correspond with the government in appropriate terms, in some cases?---In some cases.

40

And that lack of capacity was filled by the Office of Racing?---Well, I think with the  
45 business cases in particular, yes. Yes.

45

Yes. Thank you, Commissioner.

5 COMMISSIONER WHITE: Just – can I just ask you this, Mr Kelly? I take it by  
massaging the form of words that was likely to find favour with the minister and Mr  
Bentley, Racing Queensland, you didn't consider whether or not Racing Queensland  
could give those assurances because of course Treasury officials had expressed real  
doubts about the commercial viability of the clubs for which large sums of money  
were going to be invested for infrastructure improvement. There wouldn't be any  
real sense that they could be self-sustaining thereafter. So when you drafted that  
letter for Mr Bentley, giving those assurances, was it your view that it was a matter  
entirely for Racing Queensland whether they could in fact give those financial  
10 assurances?---Certainly, Commissioner. That was – and the discussions with them  
for a period of time had been that yes, they did. But I was aware as well as most  
people who are dealing with this issue that no clubs, racing clubs in Queensland are  
financially sustainable without subsidies and underwriting from the control body.  
And the control body had been doing that for forever. What was being required was  
15 a commitment from them that that was – was going to continue and that was the  
model they were going to – to use. So that commitment had to come from them.

All right. And you didn't require anything more detailed from them how – to  
demonstrate, for example, that if they received \$6.5 million to rebuild the stand at  
20 some centre, that in the future Racing Queensland Limited would provide them with  
sufficient funds to maintain that facility in that form?---No. That – I don't think that  
was the – at – to that detail.

25 You didn't need to do that?---It was (a) going to keep providing subsidies to these –  
and keep these race clubs operational.

Or where you were going to find the funds to do so. Revenue stream for Racing  
Queensland, for example, that didn't concern the Office of Racing?---In – in broader  
terms it did, and that's the – very concerning is the new Product and Program  
30 Agreement that – that's coming. That's the – the revenue stream into the future.

Certainly is. All right. Thank you, Mr Kelly. Anything arising out of that, Mr Bell?  
No. Yes?

35 MR BELL: No. Nothing more - - -

COMMISSIONER WHITE: All right. What about you, Mr MacSporran? Do you  
have some questions you'd like to - - -

40

**EXAMINATION BY MR MacSPORRAN**

**[12.39 pm]**

45 MR MacSPORRAN: Yes. I have just a few questions. Thank you, Commissioner.

If you can go to tab 213, please. I just want you to start with this because you identified this yesterday, I think, as is clearly correct. And it's the final report of your office's assessment of the control body in 2010. Is that so?---Yes. That's right.

5 And you signed off on this, according to the front page there, on the 23<sup>rd</sup> of December 2011?---Yes. That's correct.

And there's a process that's gone through to reach that point, isn't there?---Yes. There is.

10

And we'll just trace that really quickly, if we could, just to get a sense of what is involved. If you go to tab 119, please – 119. You were taken to some of these yesterday. Would it be correct to say that that is the way the process starts? This appears to be a letter from Ms Perrett of your office on the 11<sup>th</sup> of May 2011 directed to Mr Tuttle as CEO of Racing Queensland?---Yes. That's right. We – we would write to the control body saying that this is the – the assessment program that's been approved.

15

And seeking cooperation from Racing Queensland to assist in the process?---Yes.

20

And then if we go to 199, which you were taken to yesterday, it's the record, it seems – the file note – completed by one of your compliance officers, Kirsty Karauria, is it - - -?---Yes. That's correct.

25

- - - recording the process that she went through to assess, as it were, the compliance with the requirements?---Yes. That's right.

And there was some criticism, I think, of what these notes reveal and whether it was just a tick of the box or a proper investigation of things?---Yes. That's right.

30

Now, would this file note, for instance, be placed on a file at the Office of Racing?---It should be. I believe it would. Yes.

This page, it seems, would be an extract, you'd expect, of – or from that file?---Yes. Yes. That'd be right.

35

All right. And then we go to tab 205, bearing in mind that inspection, I think, was the 31<sup>st</sup> of May 2011?---Yes.

40

And that's apparently on the site at Racing Queensland?---Yes. They would've visited.

Now, tab 205, does that indicate ongoing contact to deal with issues that may have arisen as part of the process that Kirsty was involved in? I think if you go to the back page – the second page of that, you'll see that the start of the email is one from Kirsty, it seems, to Shara and Wendy – that's Shara Reid - - -?---Yes.

45

- - - and Wendy Thomas, is it - - -?---Thomas. Yes.

- - - from Racing Queensland?---Yeah. That – that looks like following up, and then there’s a whole range of email traffic backwards and forwards.

5

So the follow-up is done, it seems from the first email in the chain at the back, on the day of the inspection, 31 May 2011, and then progresses forward, as we see in the chain, concluding on the 18<sup>th</sup> of July 2011?---Yes. I’d agree with that.

10 Is that what you’d expect to happen? There would be queries raised and then answers given?---Oh, in – in – in all the assessment programs the first stage is to kick the assessment off and then as – as it progresses issues are identified that need to be clarified, more information needed. That – this would be representative of how – how one would – would run.

15

Now, we’re dealing with this one because this was chosen by the commission to deal with yesterday as an example - - -?---Yes.

20 - - - of what may have been suggested to you, I think, as being a bit slapdash in the approach?---Yes. I remember that.

25 And does this process we’re looking at with this one properly reflect, to your memory, what was done with most if not all of them?---It – I would expect a similar type of backwards and forwards correspondence and – and getting – seeking additional information and things the assessment program identified that weren’t being done, being brought to attention, saying this needs to be followed. So it – it wasn’t just a one-day assessment and – and that’s it and it’s finished.

30 I see. Well, can we go then to, in same sequence, tab 207 quickly?---Yes.

And we see there a letter from your office under Ms Perrett’s hand of 17 October 2011 to Mr Tuttle?---Yes.

35 And again, it’s probably self-explanatory, but does it indicate that the provision, attached to this letter, of a draft report from your office of the results of the audit?---Yes. It does.

40 Or the assessment, I should say, rather than the audit. And we see that draft attached to the letter and then a series of recommendations on page 8, the last – second last page?---Yes. I see that.

We can see those for ourselves, what’s recommended. And then over the page again, we see comments and follow-up actions - - -?---Yes.

45 - - - on the very last page. It says, “On 17 November 2011, a draft copy of this report was provided to Racing Queensland with a request to provide comments and develop

an action plan to implement the recommendations contained in this report by 14 November"?---Yes.

5 So that's what the – towards the end of this process you've given the draft and requested they come back to you by that nominated date, 14 November 2011, with their response to your draft?---The assessment reports – the idea of them was to identify issues. We provide that as a draft report to Racing Queensland or whatever the control body is saying these are the issues we've identified or concerns we may have, and provide them an opportunity to respond to them or tell us no, we've got it  
10 wrong, or – so that we can – we can get the report right.

All right. Now, then can we go to tab 210, and we see Racing Queensland's response dated 11 November received by your office, according to the stamp, on the last day permitted by your request, the 14<sup>th</sup> of November?---Yes.

15 And again, we see what they indicate. They seem to, is it fair to say, deal with the matters raised in your draft report?---Yes. They would've sent this in – in response to the draft report. This would be their – their – their comments back and clarification of issues and that type of thing.

20 And we see on the last page of that, number 5, the response to one of the things that you'd raised in the draft as a proposed recommendation that there be an adjustment to the need – the rule which was the need for persons who are making submissions in response to consultation to have those submissions made in writing?---Yes.

25 It was thought that that was a potential deterrent to people making submissions and it should be removed as a requirement?---Yes.

30 Now, from there – that's the 14<sup>th</sup> of November – we come back then again to your final report, which we looked at to start the process. That's tab 213. If we go back there quickly, please?---Yes.

And if we go then to page 5 of that report, heading 5.2.2?---Yes.

35 It talks there about the – or the topic is what industry consultation is undertaken in review changing the policies, and that's an important aspect to this?---Yes.

40 And you recount there that – what advice had been received from Racing Queensland?---Yes.

Policies were made urgently on the 1<sup>st</sup> of July?---Yes, when the control body – when the three previous control bodies amalgamated to create Racing Queensland.

45 And that they were widely distributed to industry stakeholders for consultation. And a copy of each policy was also published in the July of 2010 edition of the Racing Queensland magazine?--- Yes.

And stakeholders were asked to provide submissions on the policies by 16 August 2010?--- Yes.

5 The question was raised here yesterday that – whether that had in fact been checked as having been done?--- Well, I believe it had. I believe that we had confirmed that those policies had been published and they'd been sent out to licensees.

10 All right. Can we show you this document, please. Commissioner, I understand that this document has been provided to the commission. I'm not sure whether it's available electronically but we have hard copies. It's only a – it's just a copy of the magazine.

COMMISSIONER WHITE: Thank you.

15 MR MacSPORRAN: I had one before for you and there's a hard copy. Yeah. And one to the witness if we could.

COMMISSIONER WHITE: Thank you.

20 MR MacSPORRAN: Mr Kelly, is this the – is this the document referred to in the final report as the place where these policies were, as required, published widely to the stakeholders?--- Yes, I believe it is. Yes.

25 We see it's a Racing Queensland magazine, July 2010. That's published by Racing Queensland; is it?--- Yes, by the new amalgamated control body.

And if we go into the third page of the document, which is the second page after the cover page, we see [indistinct] selection – or section 81 policies?--- Yes.

30 And we see at – it sets out that the board of Racing Queensland had made the policies on 1 July 2010?--- Yes.

It lists and it indicates that they were made urgently and the reasons for that?--- Yes.

35 And then invites, as the report indicated, submissions by 16 August 2010 from stakeholders?--- Yes.

40 This magazine, what sort – to your understanding, what sort of circulation did it have? Where did it go?--- I believe that it was available to most if not – or sent to most, if not all, licensees across the three codes. I believe part of the thoroughbred code, particularly for trainers at all classes, subscription to this is part of what they pay for in their annual licensing fees. So they did – it's widely distributed. I wouldn't – I wouldn't say it was a certainty that every single licensee in Queensland got it but the vast majority would've.

45 COMMISSIONER WHITE: That's in the thoroughbred code or all three?--- This would've been in all - - -

It's just generally – and it's got a picture of all three codes on the front?--- Yes, I think – and I think Racing Queensland made particular effort with this to get to all three because it was the new amalgamated control body, all - - -

5 It was. And I did read in the minutes, of course, the whole issue of the urgency of getting these policies out?--- Yes.

And I'm aware of the background to that?--- Yes, Commissioner.

10 I think I should give some identification to this - - -

MR MacSPORRAN: Yes, thank you.

15 COMMISSIONER WHITE: - - - Mr MacSporran and Mr Bell. It think I'll just, for want of anything more original, call it exhibit 1.

MR MacSPORRAN: Thank you. Mr Kelly, the unanswered question, I suppose, I wanted to raise yesterday in part was whether, as part of the compliance officer's work you did with Racing Queensland, it was established that that magazine had in fact been published. As opposed to accepting Racing Queensland's word with that?--- Well, I am aware that this magazine was received into the office. And I believe Carol Perrett got it as part – because ultimately she was responsible for, I suppose, drafting – and her staff drafting the assessment report. And I believe one of the people who undertook the audit actually had a hard copy of the magazine. It should be on – should be on the files with the department that deal with it.

20 All right, I see. Anyway, Ms Perrett may be able to tell us shortly that the file at your office, the Office of Racing, would reveal perhaps something about whether that magazine was on the file?--- Certain – I would expect it to, yes.

30 Thank you. And in the ordinary course, when your compliance officers go out, would you expect them to be aware of whether a document like that had in fact been published? They'd be following it up?--- Yes.

35 Can I take you to tab 73, please, volume 3. This, you'll recall, is Mr Bentley's document QRL constitution, the case for change?--- Yes.

40 And you recall the questions you were asked today to suggest, I think you'll agree, that a lot of the information in here is simply wrong - - -?--- Yes.

- - - from Mr Bentley. Were you in any way misled by the inaccuracies in this document yourself?--- Look, yes. And – but as I explained, I think to Mr Bell, there wasn't a lot of attention paid to the comments made by – by Racing Queensland or Bob Bentley or call it whichever you like about the merits of litigation. And it was a litigious environment where there – look, to put it in my simple terms, it seemed that there was always someone suing someone in the racing industry about something. And there was huge disharmony amongst clubs, licensees, control bodies. Everyone



– it was a difficult environment relationship. And on a lot of cases, as I pointed out –  
rightly so, I don't criticise that they did. But it seemed to always end up in court, and  
it was always a court case over something. And what's provided in this case for  
change – as I think I said earlier this morning, it's Racing Queensland and Bob  
5 Bentley's spin on their best view of it for them. It's not – I accept it's not accurate.  
But - - -

Can I take you quickly to page 21 of that tab, tab 73, under heading  
"Recommendations"?--- Yes.

10 "Betting Stage One". And point one, "Let the current election play out. That is,  
QRL will proceed to comply with the Supreme Court orders of Justice Wilson  
already for the orders handed down" and so on?--- Yeah. I mean – and that – I mean,  
that's – it seems somewhat trite to say it in this environment because you have to  
15 comply, obviously, with the orders that are handed down. But the – a lot of the – a  
lot of the issues that he referred to were still happening or under appeal or going to  
be re-ventilated. So it was – the court will sort that out and there'll be some  
resolution.

20 I understand. And I take you to tab 155, please. This is the minutes of the three  
codes' chairmen's meetings of 23 December 2009?--- Yes.

Now you told us, I think – before we deal with the content of this, you told us when  
you were being asked questions about this meeting that there'd been previously in  
25 the 18<sup>th</sup> of December 2009?--- Correct, yes.

Who was at that meeting; can you tell us?--- It was Ken Smith, Ian Fletcher, David  
Ford, myself, Lachlan Smith. I think that was the only people from the government,  
from memory. And then there were the three control body chairs, being Bentley,  
30 Lette and Watson.

And what – what, to your recollection, was made clear at that meeting on the 18th?---  
That the government very, very much supported an amalgamation of the three codes  
of – or the three control bodies into one single control body. But there was also on  
35 the table the provision of a significant amount of public funding for infrastructure  
work. And that wasn't going to be provided across three separate control bodies for  
them all to go their own separate way and develop their own proposals. What the  
government was expecting was a coordinated industry plan. Now that – while that  
point was made clear to them, my recollection is that Mr Smith also made it very  
40 clear the government wasn't going to be giving you the answer about how you were  
to do this, the amalgamation. The money's on the table and there's a very strong  
support. And we thought from a government perspective that amalgamation made  
sense. But ultimately it was for the three then-control bodies to go away and come  
back with a plan. And that – that was to happen very quickly.

45 All right. And just briefly, and generally speaking, what was the reaction of the  
chairman of the three codes to that scenario on the 18<sup>th</sup> of December?---Bob Bentley

5 was very supportive of it, and he made the point that the thoroughbred code is 80 per cent of the industry, and so any amalgamated control body – he believed he should be the chair of it, and it should have all, if not the majority, of the current thoroughbred control body at the time. Bob Lette – my view was he was supportive of the amalgamation, but he was – he did raise the issue at that 18<sup>th</sup> meeting about independent chairmanship and – and what structures there. My recollection is that Kerry Watson was very supportive of the amalgamation into one control body. And I – and I certainly had the impression that the three of them had discussed it before the 18<sup>th</sup> meeting. It wasn't a shock to them when they came to the meeting of the 10 18<sup>th</sup> and suddenly amalgamation was mentioned and no one had heard about it before. They – they were aware and had some – and were able to take part very rationally in the discussion that happened.

15 Right. Now, we come, then, to the meeting of the 23<sup>rd</sup> of December, which is the tab 115?---Yes.

Can I take you to page 2 of that, please?---Yes.

20 And the heading there about halfway down is Constitutional Discussion?---Yes.

And the third-last paragraph you were taken to earlier by Mr Bell. It related to Mr Bentley's raising the question of a – or addressing the question of an independent chairman?---Yes.

25 And then we see in the last two paragraphs the reaction of Ms Watson and Mr Lette, as recorded in the minutes there?---Yes.

30 Does that accord with your recollection of their responses individually?---Yes, it does.

35 So no one, neither Ms Watson nor Mr Lette, indicated to the meeting that they disagreed with the proposition advanced by Mr Bentley that he be the chairman of any amalgamated body?---Ms Watson, most definitely, she – she was very supportive of – of Bentley being the chair. I think Lette – I think he agreed, but I mean, he certainly wasn't as supportive as what Kerry Watson was, but he – I think he went along with the two of them. I mean, I – I don't remember the exact words, but I think it's reflected there as a deal-breaker. That's my recollection. I mean, it wasn't a die in the ditch issue for him. That's my recollection of it.

40 Commissioner, I'll only be a few minutes, if it's convenient for me to continue, so Mr Kelly can finish?

45 COMMISSIONER WHITE: Yes. I think it would be convenient to do that. I hope it's all right for everyone else. Thank you.

MR MacSPORRAN: Mr Kelly, in terms of protections for the minor codes -- -?---Yes.

- - - vis-à-vis the thoroughbred code, had your office proposed, when the legislation was to be amended, that there be some protections included?---Yes, we had.

5 Can I take you to your statement of 27 September and para 19, please?---This is commencing senior Crown law?

Yes, yes?---Yes.

10 It's the second sentence of that paragraph starting "In 2010." See what you have there?---Yes, I do. Yes, I've got it. In two thousand - - -

Now, was that an initiative from your office, was it, to have those provisions inserted in the amended legislation?---Yes, it was.

15 And what – again, briefly if you could, please, what was the thinking behind those provisions?---The issue that we discussed this morning about – about minor codes' concern and even with the best will in the world of having an amalgamated control body, there was always in the back of my mind the possibility that people would  
20 revert to their previous allegiances. So the intention of having a provision in the legislation was to provide a safeguard that if detrimental decisions were taken by the control body, that the Minister would have the power under the Act to – to seek information on that decision, to get justification for it and even, I think, to go so far as to require a new decision to be made, not get down into the level of directing the control body what to do. Clearly the government – that wasn't on the agenda, but it  
25 was about making sure that appropriate decision-making was done and – and having a justification for it. The sort of things that were going through my mind when that was suggested – and it was ultimately accepted right up through our department and got into the cabinet's submission – was that there would be a safeguard there if – if a code did suffer a detriment of some sort. That – that was proposed. It was actually  
30 drafted. It got all the way to cabinet.

But was never approved?---No. It was – cabinet did not approve that aspect of the submission or the drafting instructions, and we had to redo them by taking that section out.

35 Would it be fair to describe that initiative of yours from the Office of Racing as something that may not have been a benefit to Mr Bentley in the thoroughbred code?---Yes, it would, I think.

40 Can I take you finally, then, to the question of your dealings with Mr Hanmer - - -?---Yes.

- - - Mr Lambert, Mr Tuttle and the issue of the draft letter you provided to Mr Hanmer?---Yes.

45 Do you recall those questions yesterday?---Yes.

I take you, just to refresh your memory, very quickly to one part of that. It's tab 80. It's Mr Hanmer's letter to you, I think. It's undated, but I think we understand it to be a letter of March 2009 from you to Mr Hanmer - - -?---Yes.

5 - - - on behalf of Queensland Race Product Co?---Yes.

And you recall the issue that this concerns. It's this whole debate about wanting to get the government's view and, as you put it, I think, yesterday and maybe today again, wanting to get the government to assist in the resolution of this problem that  
10 had arisen in turn?---Yes, that would be – that would be accurate.

And in response, you sent a draft letter. You've told us the reasons for that. I think the suggestion has been made, at least indirectly, if not directly, that you were too close to the directors of Product Co and Queensland Racing and so forth?---Yes.  
15

You've denied that, I think?---Yes.

At the time that this was happening, was there an ongoing debate about the ability of Tatts to deduct from their fee to Product Co the charges levied upon them for  
20 obtaining the race information interstate?---Yes, there was.

And had you – did you, in the Office of Racing, have access to an advice from Crown Law of 6 August 2008?---Yes, we did.

25 And was that advice, to put it in summary form, advice that suggested that Mr Grace's advice obtained by the other parties may not be correct?---Yes, it would.

Can I just have you identify for me the nature of that advice. I'll hand you, again, the document. Commissioner, this also has been sent to the commission, but it might be  
30 simpler at this stage to use a hard copy just quickly.

COMMISSIONER WHITE: Just before we proceed with that, I might just hear from Mr Thomson about this matter.

35 MR MacSPORRAN: I think we've dealt with the issue that - - -

COMMISSIONER WHITE: Well, yes, but it's not on the record, Mr MacSporran.

MR MacSPORRAN: No. Certainly.  
40

COMMISSIONER WHITE: Mr Thomson.

MR THOMSON: Yes, your Honour – Commissioner. The position is this: that the advice was produced to the commission, and my learned friend has a copy because  
45 copies of documents which were produced to the commission were produced for him for the purpose of acting for Mr Kelly. So my instructions are that whilst I don't

have instructions to formally waive privilege, the use of this document as part of the commission hearings is not a matter which I am instructed to take objection to.

5 COMMISSIONER WHITE: Thank you, Mr Thomson. Yes, if you'd give a copy, then, to Mr Kelly. Thank you.

MR WILSON: Am I allowed to see it yet, Commissioner?

10 COMMISSIONER WHITE: You can have a look at my copy. It would have been very unpleasant to say no, close your ears, Mr Wilson. Yes. Thanks, Mr - - -

MR MacSPORRAN: And your eyes.

15 Mr Kelly, just quickly, this is the Crown Law advice we've been speaking of?---Yes, it is.

It's dated 6 August '08. Did you get it reasonably proximate to that date?--- Oh, I would expect so, yes.

20 Again, bearing in mind the debate with Mr Hanmer and Mr Lambert and Mr Tuttle and so forth occurs late 2008 into 2009; does it not?--- Yes, it does.

25 If we turn to the executive summary at page 2, question 5 and answer 5. Is that the topic we're most concerned with for present purposes?--- I would think so, yes.

30 Under the Product and Program Agreement, would UNiTAB be entitled to deduct the fee it is charged by New South Wales Racing control body from the product fee that it pays to Product Co. And the advice indicates yes under the terms of the Product and Program Agreement?--- Yes.

And the matter is dealt with in the body of the advice if you turn to page 20 of 26 in the compilation?--- Yes.

35 There's a further brief reference to question 5 and the answer there - - -?--- Yes.

- - - consistent with the executive summary I've taken you to a moment ago?--- Yep.

40 Now, you had that advice at the time that you were dealing with the - Mr Hanmer and co?--- Yes.

Did you provide a copy of that advice or tell them about the advice you had?--- No, I did not.

45 And why was that?--- This advice was advice that we got from Crown Law. It was privileged advice to us. It was also forming part of a cabinet submission because it dealt with a range of issues on - potentially relevant to Queensland introducing the race fields legislation. And a lot of this advice deals with section 92 issues which we

were very concerned about having our legislation invalidated if we didn't. So Crown Law was providing advice on a range of matters. But obviously it touched on the issues that – the product fee.

5 COMMISSIONER WHITE: Well it's the touching I think, Mr MacSporran; isn't it?

MR MacSPORRAN: Yes.

10 COMMISSIONER WHITE: It's hardly sort of to the forefront of the lawyer's mind who's doing this analysis, I think. Because I've had the opportunity to read it to in advance.

MR MacSPORRAN: Certainly, commissioner. But of course it is legal advice - - -

15 COMMISSIONER WHITE: Of course.

MR MacSPORRAN: - - - in Mr Kelly's possession which went to the very heart of the debate he was part of in that very time.

20 COMMISSIONER WHITE: Well, it certainly did address that issue in a very passing way. But yes. And it's quite clear that the section 92 interest was right at the forefront of the – your mind.

25 MR MacSPORRAN: Yeah.

COMMISSIONER WHITE: I take it, Mr Kelly, that you were – in the Office of Racing you were really acutely concerned with the challenges to the constitutional basis of the New South Wales legislation at this stage?--- We were, Commissioner.  
30 We were watching that very closely.

Right, thanks.

MR MacSPORRAN: Thank you. Mr Kelly, just finally on that topic. At the time  
35 we're talking about when you were dealing with Mr Hanmer and co, did you realise how important the content of this advice might have been to them?--- Yes, they were – Mr Hanmer, Lambert and Tuttle were in a disagreement amongst themselves it was trying to wind me and the office and the government into. And if any one of them had have known about this or had this, I'm sure they would've been screaming from  
40 the rooftops, waving at seeing that, you know, I'm right. Here it is. And I can't put it any plainer than that.

[indistinct] rooftops, yeah?--- I mean, they were – I was getting – not Mr Lambert, I'm sorry to – I mean, he only rang me the once. But Mr Hanmer and Mr Tuttle,  
45 there was numerous telephone calls. And they had their very strong and personal views about what the rights and the wrongs of this whole situation was. And I had access to this advice the whole time.

All right, thank you. That's all I had for Mr Kelly, Commissioner.

COMMISSIONER WHITE: Yes, thank you. Mr Bell.

5 MR BELL: I just had one or two questions, Commissioner. May I - - -

COMMISSIONER WHITE: Well, yes. We might as well.

MR BELL: I'll only be very short.

10

COMMISSIONER WHITE: Tidy up. I should say, Mr Thompson particularly, I don't intend to make this Crown Law advice an exhibit because it would otherwise tend to be available, I think, generally. In view of the fact that it's a limited - - -

15 MR THOMPSON: Yes.

COMMISSIONER WHITE: - - - waiver. Are you content with that course?

MR THOMPSON: Yes, Commissioner.

20

COMMISSIONER WHITE: We'll just receive it.

MR THOMPSON: And I was going to raise a further matter that my learned friend Mr Bell, of course without my objection, did provide Mr Wilson with a copy of that. But we take the view that it remains subject to legal professional privilege that hasn't been waived. So can I put it on the record that we really expect Mr Wilson not to use or distribute that document beyond him looking at it at the bar table.

25

COMMISSIONER WHITE: And for the purposes of representing his clients in the Commission.

30

MR THOMPSON: Yes.

MR WILSON: Commissioner, I'm certainly going to do that. I understood that instructions are being taken as to whether privilege would be waived. But we haven't got an answer to that yet.

35

MR THOMPSON: And if it happens, I'll let my friend know when that [indistinct].

40

COMMISSIONER WHITE: Would you take it amiss if I asked you if you'd be kind enough to leave your copy in the courtroom when you leave?

MR WILSON: Oh, of course. Yes. I'll do that.

45

COMMISSIONER WHITE: That paragraph 5 – because I've read it – is the only one that deals with the core issue, of course, and you can read it in a blink of an eye. The rest is not particularly relevant, I think, to these issues. Thank you. Yes.

Thanks, Mr Bell. So we'll – if you leave it behind, and we'll just – it's on the record that it was dealt with in the course of the commission and if it needs to be taken up again, we can. Yes. Thank you, Mr Bell.

5 MR BELL: Mr Kelly, I wanted to be clear – and I heard that Mr MacSporrán took you through the plan that I had asked you questions about. I just wanted to point out my matter of substance and the reason I raised it. What I'm talking about is – would you have another look at folder 6, 213, just to refresh your memory what I'm talking about. You recall when we looked at this? This was the assessment undertaken in  
10 accordance with the legislation for 2010 for Racing Queensland, and we went, you recall, to page 5. If you just go to it briefly. I don't want to go over it again. I just want to show you my point and - - -?---Yes.

- - - ask for your help, even if later in a statement. In paragraph 5.2.3, you see the  
15 concern of the office in relation to this report was the industry consultation undertaken in accordance with the control body's policy development policy required under section 81(a)?---Yes.

And I looked at – before asking you any questions, just to show you the background  
20 – I looked at section 81(a), which says, “The control body must have a policy for its code of racing about each of the following: (a) the way the control body must develop policies, including the consultation it must undertake as part of the development of a policy.” And when the office is doing this program to assure itself that there is compliance with the obligations under the legislation for the control  
25 body, my focus was on the thinking in the legislation that there would be stakeholder consultation. You know what I mean?---Yes.

In the development of policies – and in particular, I thought not just technically but as a matter of substance. And in checking whether, as a matter of substance, the  
30 industry was consulted about the development of policy, I felt that the indication was that as there were only three submitters, all within Queensland Racing – within the thoroughbred racing body – Mr Orchard, Ms Reid and Mr Sanders, all who would have an interest, no doubt – it gave a flavour that, in fact, even though there was a requirement for consultation of stakeholders, none was effective. You know what I  
35 mean? And yes – look, you know, nobody can be critical of somebody for saying, “Were the boxes ticked?”, but in essence, was there really any real attempt being made by Queensland Racing to have the stakeholders be engaged with the development of policies? And that's why I asked you that question. It looked like the office was asking that question, but it didn't look like anything real, anything of  
40 substance was done about it. And that's really why I was asking you. Do you know what I mean? I'm not trying to trick you on technical points; I'm trying to see whether they were doing it, actually consulting with their industry. Do you see?---I know what you're asking, and I – I hope it was explained to some level before.

45 Yeah. I mean what obviously happened is after the 1<sup>st</sup> of July, they published in the magazine out to all the licensees and so on – maybe, let's say, to every industry holder – the policies. And I just wondered whether that was – that publication is



5 inviting to people in that industry to be consulted as to what the policy should be going forward. You know what I mean? As a matter of substance – I wasn't interested in - - -?---Well, those policies were all existing policies that had already been a policy development process as well in the harness, thoroughbred and greyhound codes.

10 Yes. I understand that?---They'd been put together to that, and as far as inviting information from licensees, well, my understanding is licensees don't have any – any problem responding to issues in the racing calendar when they wish to. I don't think any of the policies that were put out there for the consultation were new, and that's probably why there – there were no responses. I mean there's – there's nothing novel in any of – of that.

15 It doesn't seem like the stakeholders in the industry were thinking, at least, that they had a role. Do you accept that? Because we didn't get any – because on this occasion there wasn't any and when the office was checking, the office was concerned about seeing – I'll just read you what it says. It's really important: "Racing Queensland's code of racing policy" – I'm reading under 5.2.3 – "made under section 81 provides that consultation is a core element of policy development." 20 And so I was thinking that probably did reflect the legislation, that we want to – meaning "Let's have the industry" - - -?---Yeah.

25 - - - "engage in the development of policies to manage it"?---Well, I think an issue, say, for the use of the whip – I don't think you could get much more consultation that's happened on that. I mean it's – it's been around Australia-wide. Queensland has huge changes of rules and so it – but it - - -

30 What happened there? Did that get lots of public press and everything, that they were talking about that? Is that how – is that why people all responded?---No.

They knew it was on the table? You know what I mean?---That – that was part of it. It depends on – on what the policy is or – or what - - -

35 Well, exactly?--- - - - the interests of the person is. I think a policy on education and development and then training may get more submissions than a policy on our policy for policy development, if you know what I mean. It depends what the interest is. I - - -

40 No. I understand your point, and it's a good one. I was thinking that community consultation, meaning – I think meaning – stakeholder consultation was something that the legislation required. And in seeing that when it was checked by the office whether that was happening there's no responses, it looks like it's – if it's happening, it's ineffective in getting the public involved. Do you know what I mean?---I can – I can understand that view, and I – I think - - -

45 And that's what I was really asking you, and if you can help us – help the commission further with some statement – I'm inviting you. I'm not saying you

5 have to, of course. But that's the point of it. It just looked like throughout this time, as the commission's been conducting the investigation into the terms of reference, that community consultation was off the table. You know what I mean? In real substance, as we saw with the amalgamation thinking. You know, the chairs got consulted – yes – and the CEOs, but it was off the table for the people who were in the industry, the – you know, the trainers and the harness riders and so on?---Yes. I accept what you're saying. I understand.

10 And that was really an acceptance of a position, I'm suggesting to you, that was taken by the control body for thoroughbred racing that, "Look, they don't know what's good for them and there's just litigation and everything – everybody kicks up dust if you consult them. Let's just drive home what we think." You know what I mean? That's what it looks like a little bit?---I – I – I know what you're saying. Yes.

15 Yeah?---But I can't - - -

Anyway - - -?---I can't comment for the board of the control body.

20 COMMISSIONER WHITE: Mr Kelly, I think you said in your answer just a moment ago that these were existing policies that had been developed. Perhaps in a supplementary statement you might be kind enough to consider giving to the commission, you might be able to demonstrate how it was that there was the consultation and the development of the policies which you say really went out very quickly because of the 1<sup>st</sup> of July 2010 issues. It would be, I think, of assistance to perhaps counter the – what looks to be the case – there was next to none for these policies – that perhaps it had happened in the past?---Certainly.

30 MR BELL: Thank you, Mr Kelly.

COMMISSIONER WHITE: All right.

MR BELL: Could Mr Kelly be the same as other witnesses.

35 We don't anticipate calling you again, Mr Kelly, at all?---Mr Bell, I've – I've approached the commission for leave from the 22<sup>nd</sup> of - - -

40 Okay?--- - - - October, and I haven't got an answer back yet. Would I be able to get a determination on that from - - -

COMMISSIONER WHITE: I think so?--- - - - from – in some time.

We'll get our secretary to write in response to Mr Kelly.

45 MR BELL: We'll do it immediately, Mr Kelly?---Thank you.

COMMISSIONER WHITE: Thank you. Mr Bell, it might be a bit tight for time for a lot of people to get their sandwich.

MR BELL: Yes.

5

COMMISSIONER WHITE: Can we do 2.30.

MR BELL: Thank you, Commissioner.

10

COMMISSIONER WHITE: And thank you, Mr Kelly.

**WITNESS STOOD DOWN**

**[1.23 pm]**

15

**THE COMMISSION ADJOURNED**

**[1.23 pm]**

**THE COMMISSION RESUMED**

**[2.33 pm]**

20

MR BELL: Commissioner, I intend to call now Carol Anne Perrett, please.

25

**CAROL ANNE PERRETT, SWORN**

**[2.33 pm]**

**EXAMINATION BY MR BELL**

30

MR BELL: Your full name is Carol Anne Perrett?---Yes. That's correct.

And Ms Perrett, you have provided two statements to the commission, the first sworn on the 2<sup>nd</sup> of August and the second the 16<sup>th</sup> of September?---That'd be right. Yes.

35

Could Ms Perrett see her statement sworn the 2<sup>nd</sup> of August, please.

Ms Perrett, I saw in paragraph 2, 3 and 4 of your first statement that you helpfully explain the make-up or the structure of the Office of Racing by reference to its two branches, if I can call it that: the Office of Racing Regulation and secondly the Racing Science Centre?---That's correct.

40

And in paragraph 3 you set out the personnel in the Office of Racing Regulation, I think, don't you?---Yes.

45

In particular, one role is director, investigations and compliance, and that was the role you filled, I think?---That's right.

And executive director was the role of Mr Kelly?---Yes.

And in regard to that role, investigations and compliance, does that aptly define your role?---Not really, no. That was a title that was given to the position a long time ago.  
5 In - - -

You go on?---I was going to say investigations and compliance is not a large part of my role. There's a lot of other things, as listed there.

10 Okay. In paragraph 4 you list functions, and I'm looking at – the first six, I see, really relates to communications above you within government, to Minister and so on?---That's right. That's a big part of the job.

15 That's a big part of the role and that would mean, would it, that drafting briefing papers and letters and so on is a big part of your role over the years?---Yes.

And then if I ask you to go down to the role you define as – sorry – the function you define as performance of legislatives responsibilities under the Racing Act, in that regard are they the annual obligations under the Racing Act for control of the control  
20 bodies, or at least auditing and programming of them?---Yes.

And would you be involved in them from year to year?---I would be. Yes.

25 And then I see, three from the bottom, monitoring and liaising with the control body. Is that part of your role, that is, monitoring the control body?---Yes. That's part of the legislative role, is an authorised officer to monitor the control body.

30 And what about liaising, Ms Perrett? I'm not quite sure I understand what that means?---That would be as part of the oversight role, liaising with the control body to get information. We had systems in place where certain officers in the control body would provide information on various issues, depending on their responsibility.

35 Okay. And you've used "oversight" twice, and is that how you saw the office in respect of the control bodies – overseeing their conduct?---We did have a role in overseeing it. Yes.

Was that an important part, as you saw it, of the Office of Racing?---It was.

40 Okay. And what else would there be besides the broader definition of oversight? For example, to help you, I'm thinking in the last point – administering the funding schemes – I would understand that?---Yes.

45 That would be a role, of course, outside oversight, wouldn't it?---Yes. That's something new that's come along in the last couple of years.

Yeah. Yeah. Just thinking about it then, certainly oversight is one thing. And if one looks at the legislation, you can see the different aspects where the chief executive or

the Minister has a role to oversight the conduct of the control bodies, can't one?---Yes.

5 Okay. Why don't we do that, please. If I just ask you to have a look at the Racing Act with me. I just wanted to define a few things. We may have different versions, because they changed a bit over time. The relevant sections I don't think are changed – the relevant meaning the ones I wanted to show you. You tell me if you want to show me other ones or you can do it later, if you wish, in a supplementary statement. I wanted, please, to refer you to section 4. In asking you to do this, is it  
10 something that you would have reference to in your role, or would you be instructed as to what you would be doing? Would you - - -?---Sorry? I missed - - -

In your role, would you have reference to the legislation from time to time?---From time to time, yes.

15 Okay. Section 4, please. 4(1)(a), what it says is the main purposes of the Act are to maintain public confidence in the racing of animals in Queensland for which betting is lawful. And how did you see that as a purpose of the legislation? Are you able to say? That's a broad question, I know. Just say it's too broad if you don't get  
20 me?---Well, the idea is that – to ensure that it's a fair system, so that people have confidence in betting on it.

Okay. And in (b): “to ensure the integrity of all persons involved with racing or betting under this Act”. Would you – I understand, from your answer just then about  
25 (a), you would see that as involving everybody who is putting on the race, participating in it and also maintaining betting services or wagering operations as well, I take it?---Yeah. Some of the Act – there's provisions about bookmakers, a whole eligibility regime to make sure that only fit and proper people can be  
30 bookmakers.

Okay. When you defined in your statement the two sections of the Office of Racing to Office of Racing Regulation and Racing Science Centre, the terms of reference for the commission, at least in my judgment, appear to focus more on the first mentioned, which is the Office of Racing Regulation?---Yes.

35 Do you agree with me about that?---Yes.

Okay. So then if I ask you, please, to look at section 4 subsection (2). And if you go to (a), the main purposes – which are above mentioned in (1) – are achieved by  
40 providing for the following: the process for approving an applicant as a control body; (b) the approval of a suitable applicant as the control body to manage a code of racing. Did you see, during your time in Office of Racing, that the role of, say, for example, Harness Racing Board was to manage its code?---That's correct.

45 And same for, obviously, the other codes?---Yes.

(c): the performance by each control body of its functions under the Act of managing its code of racing?---Yes.

5 The same thing. Okay. Now, then I'm looking, please – if you don't mind going to (h). "The main purposes are achieved by providing for the following: the investigation of matters under, and enforcement of compliance with, this Act by authorised officers." And investigations in relation to the conduct of control bodies, would they be encompassed by that?---Yes. They would.

10 Okay. Were any investigations undertaken by the Office of Racing from time to time in relation to the control bodies?---They were.

What sort of investigations?---I can't tell you off the top of my head. We - - -

15 That's okay?---We only got access to those files late yesterday - - -

Okay?--- - - - so perhaps if I could address that in a supplementary statement.

20 Of course you can. Yes. No, that'd be helpful. In particular, let me ask you this, to be more precise in my question. It seems on the material that the commission's reviewed so far that there has not been any investigation into the suitability of a control body to manage its code or into the suitability of an associate of that control body to manage its code in the five years that we are concerned with here from 1<sup>st</sup> January 2007?---That would probably be correct. It would have been into some  
25 aspect of the control body of the investigations we did.

And the commission of course is, as you know, focused at least in this part of the public hearing in looking at the overview and the way it was conducted in relation to events that occurred during the relevant period. That is from 1<sup>st</sup> January 2007. For  
30 example, we know that there was no investigation undertaken by the Office of Racing in relation to what seems to have become defined as a proxy issue that arose in relation to Queensland Racing Limited in respect of a Mr Ludwig signing a proxy for himself at a meeting of class A members of that coming. Do you recall events about that?---I do, yes.

35 And did you participate at all in matters relating to that for the Office of Racing?---I would've, yes.

40 And is it your recollection that any investigation was undertaken by the office as to his conduct?---No, it wasn't.

Okay. Do you recall at any time that there was a direction from a minister, or the minister, to undertake an investigation in relation to that issue?---No, I don't.

45 Okay. Now, I'll just have you hand that legislation back now please. And would you mind looking at a document or two for me. I'm going to folder number 6 and

I'm seeking that you look at divider 212 please. This, Ms Perrett, seems to be an email from Mr Mathofer of Racing Queensland in December 2011, to you?---Yes.

5 And take your time to read any of these emails I show you because you may not have seen them for some time. In any event, what he seems to record in the email is, "I've been asked to forward to you the current RQL purchasing policy documents including finance procedures. The addendum was developed to further align the RQL policy with Queensland Government Procurement Policy. Please review and provide any feedback you may have." Do you recall having any occasion to look at  
10 any purchasing policy of Racing Queensland at that time?---Yes. I do remember that we asked them to – to review their policy and I'd actually given them guidance [indistinct] with an email where I've emailed them and we had a discussion I think with Malcolm Tuttle also in relation to making the policy more in line with the State Purchasing [indistinct]

15 Okay. And the role you had in that – or in reference particularly to this email, looks like Mathofer was asking you to review what they proposed, doesn't it?---Yes.

20 Did you do that?---I believe I did have a look at what they provided.

Okay. You see, just to show you what happened after this for your immediate reference – if you go to 213A at the book please. You'll see an email there to you from Deanna Dart?---Yes.

25 Okay. And she's telling you in the email if you look at it that the RQL Purchasing Policy was adopted by the board on the 19<sup>th</sup> of December in the format that was sent to you. See that?---Yes.

30 And then if you go to look at what is attached there you see a purchasing policy. You see that?---Yes.

35 And in particular I think there appears to have been resolution by the board to endorse the addendum that Mr Mathofer had shown to you in the earlier email. Have you got me? Just going back to 212 please?---Yes, I see that.

Ms Perrett, I'm particularly interested to ask you what you undertook when you received this document in seeking to review it. Can you recall now what you did?---I can't – I can't recall now, no.

40 Okay. But the point - - -?---I would've read it, I guess. I – I would assume I would have read it.

45 Okay. I'm not suggesting there's anything wrong with not remembering. If you look in the bottom right hand corner of the addendum, you'll see page 5 of 10 please?---Yes.

5 And up the top it says applications to sole supplier and the commission has had difficulty trying to give meaning to this part of the policy. And the reason is the background evidence that you may not have been aware of, or you may have been, was that Racing Queensland had retained the services of a company called Contour and for some time without even procurement policy being complied with, had retained them to do a degree of work in relation to the infrastructure plan?---Yes, I had – didn't know at the time.

10 Okay. Anyway, under 5.1 applications for sole supplier, the difficulty with it, at least in the present judgment of the commission is with terms like a sole supplier situation in (c) and it's a little difficult to see what is a situation that comes within that and one that doesn't. Was that the sort of thing you considered at the time you reviewed it or you didn't go into it at that depth?---I don't recall going into it in all that depth but it says for these – as exemption from normal policy practice may be applied for in  
15 those cases.

20 Yes?---So if there was a genuine urgency or a high degree of technical expertise is required and they've got someone who would fit that well then they could – there could be a process where they could approve somebody to – on that basis.

I see. Look at the last two lines just under ABCD, “Unless the above stated exemption criteria is met or other compelling reason is able to be supported, the current RQL purchasing policy with addendum would apply.”?---Yes.

25 So it would seem that it's pretty open-ended, isn't it, as to when RQL could decide not to apply the policy. “Other compelling reason”?---Well, it – my understanding of the way it works in government is that if the circumstances arises and for instance, if there's a genuine urgency, well then we would make – write a briefing note, make a submission to whoever the approving person is, justify why the exemption needs to  
30 be granted. Now - - -

Yes. I see?--- - - - I thought that would be the same process here.

35 Your thinking was that at least in government your experience is that if some unusual situation arose, somebody would keep a record of what the circumstances were and have that approved as an exemption?---Yes. It would have to all be documented.

I see. The difficulty also arises, Ms Perrett, if you just look down the foot of the page, please – of that page. You see, “for longer term consultancy arrangements”.  
40 Dot point 1, “Individual consultancy contracts over \$100,000 in value are not to be entered into under these preferred supplier arrangements. Such consultancies will be subject to board discretion as to the waver of any open tender”. That seemed a bit odd and I'm asking you to comment please, Ms Perrett, because what that would mean is they don't have to do it if they don't want to – the board I mean. And it's –  
45 because it's public money the proposition I'm advancing for your consideration is that it makes it pretty in their discretion, doesn't it?---It does. It says will be subject to board discretion.



Yeah?---But I would expect that there would be good reasons and it would need to be documented if that was the case.

5 Yes. Well, that's right but it doesn't – it – frankly, it doesn't say that but it – one in your position I understand would normally that goes without saying?---Definitely.

10 And so therefore, we're looking at this policy, trying to envisage what you were looking for on behalf of the Office of Racing and looking at it knowing that Racing Queensland were proposing to obtain about \$110 million of the public money, weren't they?---Yes.

And - - -?---Eventually.

15 Eventually. Over four or five years, I've got?---Yes.

But the point was that the board was going to have a discretion about how it wished to tender – about how it wishes to procure, I should say, for consultancy long term, you see?---Yes.

20 And then over the page and if you want to have a better opportunity to look at this policy to help us after the hearings are finished, please do so. Over the page, the second dot point: “A competitive process, adhering to the six key purchasing principles of Racing Queensland Limited, to appoint a panel of preferred suppliers must have been undertaken.” You must surely have read that to mean that before  
25 somebody gets on that panel, they would have had to have gone through a process?---Yes.

30 And the situation here, we know for sure, is that Contour, this company I'm talking to you about, did not go through any process like that run by Racing Queensland, you see? So that would make it difficult because the representation to you, at least, and the office is that they're going to go through competitive processes, don't you think?---Yeah, that was my understanding: that they would.

35 Yes. Exactly. So going back – I'm not going to waste too much time on this. Going back, please, to page 4 of 10, 1.2, Preferred Supplier Listings, it says, “Preferred supplier listings for infrastructure plan projects are to be developed by inviting suppliers with experience and expertise in the key areas that make up the projects identified.” Next paragraph: “These supplier panels could be further refined by way of pre-qualifying of supplier lists.” And then – I won't take you through it now, but  
40 the pre-qualifications there seem to envisage a process of determination for getting onto the list for Racing Queensland, but none of that seems to have happened with this company, Contour, you see? That doesn't fit with what was being represented to you, I think, does it?---Yes.

45 Okay. So I showed you 213A. Would you mind going to 216, please. I think there's a thread of emails here, the last one of which is one from you responding to

that request to review it on behalf of the Office of Racing, and you came up with the response that there weren't any issues with the purchasing policy?---That's right.

5 Okay. And you had already advised Ron and Adam of the fact that you didn't have any issues, I think?---That's what it says, yes.

Okay. So just to think about that for a moment, had you had any experience with reviewing purchasing policies before?---No.

10 Okay. So with that in mind, it must have been difficult to look for any loopholes or faults in it, was it?---Yes, it – I guess it was. I'd - - -

COMMISSIONER WHITE: Could I ask you this: had you had any experience in dealing with building companies or suppliers generally in your work?---No.

15 Thank you?---I had asked somebody to send me some of the government terms and – out of the state purchasing policy and what was expected, and I used that as a basis, I believe.

20 MR BELL: And with that, was that used as a model to compare, was it?---I don't know if I compared, but that's what I sent to Racing Queensland - - -

I see?--- - - - and given them advice on what they should include in their policy.

25 Okay. Could Ms Perrett see volume 3, document 88, please.

This was a document that was sent to the Minister, Mr Lawlor, and to the government by Queensland Racing chairman, Mr Bentley, which he had styled Queensland Racing Industry Issues Paper. Can you recall this document?---Yes, I do.

30 And this came to your attention, I think, in about May or June 2009?---Yeah, that would be correct.

35 Okay. And I think that this document required some assessment for the purpose of briefing papers to the minister, didn't?---Probably, yes.

In particular, could I ask you to go to page 40 of it, please. I don't know whether it's necessary, but you'll see it under the heading Outcome. What's recorded by the chairman is the outcome in relation to an issue, which I described earlier as the proxy issue, and what he's representing is, in the first dot point, all three agencies with reference to ASIC, Crime and Misconduct Commission and the Queensland Police. "All three agencies cleared the conduct of QRL, its directors and executive officers." You see that?---Yes.

45 It seems reasonably clear, anyway, on those documents that they didn't. Did you – were you aware of that?---Well, not at the time, no.

Okay. So at least for your part in assessing this document, you would have assumed it was truthful?---I believed it was.

5 Okay. So just bearing that in mind, I'd ask you to go to folder 4, document 102, please. It looks from the email – and I'll tell you why in a minute. It looks from the email like you have prepared a submission, and it's been reviewed by Justin Murphy in the premier's office, and he has sent this email back to you and to Sandy Williams etcetera?---Yes.

10 Okay. And he says, "Please find department premier cabinet comments below," and I'll just let you have a glance over that first page down to about point 75 of the page, please, and I'll ask you a question about it?---Yes, that was the CBRC submission for funding.

15 And the way I'm reading this first page, anyway, is that premier and cabinet are seeking to understand whether any work or research has been undertaken by DEEDI, which is your department at the time, to test the funding propositions put forward by Queensland Racing in that issues paper, isn't it – aren't they?---Yes.

20 And was any research or critical assessment, to use their words, of the recommendations undertaken?---I believe treasury department would have done analysis of that. I don't believe that the Office of Racing would have done it.

25 Okay. So the answer is, if that's a criticism, it was aimed at the wrong person because it wasn't the office who was to do that?---Well, I notice it's cc'd to Samuel Blake at treasury as well.

Yes. You're right. But so far as it's directed at you, that is, the Office of Racing - - -?---Yes.

30 - - - it wasn't directed at the right person because your assessment of your role was not to do anything like that: to validate propositions coming from the control body?---Well, I'll just see exactly what it says here.

35 Yes, of course?---Well, we would have addressed some of the things, but I know the treasury department – they had quite a role in all the issues to do with the – the money side of it.

40 I think if I look at the second – or I should say under the heading General, the second sentence, it reads, "What work has been undertaken by DEEDI to validate the findings of the issues paper?" And I think that's not directing at treasury. That's at your department?---Yes. We were part of DEEDI.

45 "And what work has been done by the DEEDI to identify industry-based sources of funding or develop other options?" And then this seems to be more of a judgment than anything. His judgment is "It is not appropriate to simply rely on an industry-generated issue paper without undertaking a critical assessment of the

recommendations provided.” You agree with that?---When is this? This is the 26<sup>th</sup> of October.

5 Yes?---Yes. I think that basically the decision had been made, that there would be funding given to the control body.

10 Well, that might be so. That’s exactly what Mr Kelly said too. I’m surprised that you say it too, but maybe that’s right. We’ll have another look. But it’s funny, isn’t it, because if I look at the first line – “Carol, thanks for your latest submission.” So sitting back looking objectively at it, it would seem that you’re doing a submission for something?---I was doing a submission, yes, for the funding.

Yeah?---Yes.

15 And so the submission is for the funding, meaning it’s going to be relied upon, and then the questions he asks are what has been undertaken. He says “without undertaking a critical assessment of the recommendation”. He’s sort of posing those questions, and I’m trying to pose them here too. Was that something that was to be undertaken by DEEDI, or - - -?---I don’t remember; I’d have to look at the next version of the submission - - -

20 Okay?--- - - - to see. Normally we’ll provide – like happened here, we would provide a submission to treasury and premiers. They’d come back with comments. We would attempt to address those comments and it would go backwards and forwards.

25 Understood, but it seems if I take this email at this stage, you have already presented, let’s say, your first submission?---Yes, early draft.

30 In your draft submission, and he’s said, “It is not appropriate to simply rely on an industry-generated issue paper.” My question is can you recall – did you, in the time were you there, rely upon them, that is, propositions from the industry control body QRL in relation to these things? Did you just rely on them?---Well, sometimes we would rely on them.

35 Okay?---If it was – and other ones we would question it. It would just depend on the – the issue.

40 Yeah. Well, at least this man, when he looked at the work you had done on this one – “Thanks for your latest submission” – he seems to be critical of the fact that no critical assessment of the recommendation had been made at that point, doesn’t he?---Yes.

45 Okay. Would you please turn to 107. I’m sorry. I’ll get you to go to 73 to – so that you know what I’m talking about. I should’ve done that first?---Yes.

This document also is from Queensland Racing; it was provided later by that control body, and it's titled QRL Constitution: The Case for Change?---Yes.

5 Can you recall that one?---I do.

And was that one in which you became involved too in respect of assessing it for commencing draft submissions?---I think I did, because you've just given me this document here where I've - - -

10 That's okay. Yeah. It's impossible to remember without the document?--- - - - provided comments on it.

15 Okay. So then, as you say, I asked you to go to 107. And what it says is – what it seems to say is that – at the bottom of the page, you see Lindsay has sent you an email on the 16<sup>th</sup>: “I would appreciate your comments on the attached paper, including key issues that should be brought to Ken’s attention and recommendations.” You see that?---Yes.

20 And then he sends you another one: “How are you tracking on this”?---Yes.

And then I think you come back on the 17<sup>th</sup> and say, “Just finished. It is attached,” and then if you turn over two pages you'll see a document that says Comments on the QRL Case for Change?---Yes.

25 Okay. And if you turn over to page 2, it would seem that what you've done is put the office's comments into boxes – into the box?---Yes.

Okay. Now, for - - -?---I don't specifically remember - - -

30 Okay?--- - - - producing this document but it is attached to my email, so obviously I had - - -

Okay. I understand?--- - - - done work on it.

35 In any event, what's happening here is that QRL have put up a proposal in the Case for Change, because that seems to have been requested by the premier and the treasurers?---Yes.

40 Would you like – do you remember that?---Yes.

Okay. And what happens is that Lindsay is asking for your help to address the propositions in it, I think, isn't he?---Yes.

45 Okay. And when I read in the box – just let me show you what I mean. When I read in the box “It is considered that in the longer term the establishment of a one control body model would be expected to significantly reduce control body administrative overheads, drive efficiencies and result in coordinated industry decision-making,” I

5 see that that comes from within the document. That's what the industry body was saying. See what I mean? And then I read down through to the last paragraph in the box: "Grassroots stakeholders resistance to control body amalgamations would be expected. This resistance would not be based on any logical argument." I think that's the mantra too that the proposer for the change, for the Case for Change, was selling too. You know what I mean?---Yes.

10 So the comment in the box is an agreement with the proposition; that's what I'm suggesting to you. Do you have any comment on that?---No. That's -- that would be true.

15 Okay. And then over the page to page 4, please. I'm going to page 4 because there's two boxes there, and they look like comment too because they're titled Office of Racing Comment?---Yes.

20 And again, it looks like -- in the last paragraph: "In view of the reasons outlined above, it is considered that an initial term of five years until 2015 is a reasonable period," and that seems too to be accepting the proposition put forward by the control body?---Yes. That was on the basis that the Product and Program Agreement would finish in 2014.

Yes. And that's what they were saying, weren't they?---Yes.

25 And then the next box: "It is considered that a two-year term would ensure that the directors are not constantly in election mode," and that's what they were saying, of course, weren't they, because the proposition they were advancing was that we'd had all this trouble in this litigation, *Andrews v Queensland Racing*, and it was expensive and they had to go through the process again. And the bad thing about it, they were asserting, was that industry people -- people in the industry and the stakeholders were funding this litigation. You know what I mean?---Yes.

Do you remember that?---I do.

35 And so they were saying, "Let's have less elections," and it's looking like your comment is, "Yes. That's a good idea." I just don't see any critical analysis the other way, you know -- other way meaning "Well, what's bad about it?" Do you see what I mean?---I can see what you're saying.

40 Okay. Turn over the page to page 5. You see there the comment is "The appointment of directors by a panel of three independent recruitment consultants would address the issue of clubs and licensees who are regulated by the control body voting on the appointment of directors to the control body." And that too is what they were saying. They were saying, "Look, we can have this put in so that the independent recruitment agent shortlists the applicants for future director positions that become available," and you were really endorsing their proposition, weren't you?---Yes, because that had been an issue in the past - - -

Yeah?--- - - - where you had representatives from clubs pointing people to the control body, and then everybody's wanting to vote in the interests of the club that's put them there - - -

5 Yeah. Exactly?--- - - - and it got to the point where - - -

It was unruly?--- - - - any sensible decisions couldn't be made.

10 Yeah. I've [indistinct]. And so the idea was that what was in the present Queensland Racing constitution was having class A members, who were from clubs and representatives of country and so on, and that hadn't worked well?---No.

15 Is that what you mean?---Yeah. That's right, because the control body has responsibility for regulating the clubs. And then the clubs were voting on who should be the directors, and then you've got everyone lobbying everyone else and - - -

20 So each year everybody's worried about winning their election, so they've got to - - -?---Yes.

- - - do good by their club?---That's right.

25 That was the problem. But that was the point of the argument Mr Bentley was advancing to the Office of Racing, wasn't it?---Well, it was an issue that we were aware of. As I said, like, back in probably 2000 that issue had arisen then, and that was why we had changed models that far back - - -

Yeah?--- - - - because the representative model had been an issue.

30 Yes. And in 2006, what happened was when Queensland Racing was accepted as the control body it did have in it class A members?---It did, yes.

35 Which were the - and the legislation had in it the representation from the country. What they were saying here was, "Let's get rid of that", weren't they? And they gave us - let's have a look at the - do you still have the case for change there which is folder 3 and document 73 where the linchpin of their argument I think on page 9, looking at the bottom of the page please. The linchpin of their argument was exactly as you say but he was using, he the chairman, was using the case of *Andrews v Queensland Racing*. See that heading there?---Page 9, is it?

40 Page 9 please, yeah. It's got a heading under 2009?---Yes.

45 Yeah. It's got a - he uses as his prop or his premise for the argument, "*Andrews v Queensland Racing*" and then if you go to the second paragraph he says, "without recounting the nature of the litigation bought by Andrews it is of significant importance to note that Andrews was in receipt of financial assistance by others prepared to co-fund the action bought by him". And looking at the foot of the page,

“identifying and understanding the motives of those that have co-funded the Andrews action provides a great insight as to the underlying reason why the action was initiated?---Yes.

5 And that’s the point that Bentley and Queensland Racing were making to the office that, that was the trouble – troublemakers you know – they’re always causing trouble. You know what I mean?---That wasn’t what I was thinking of when I’ve written that comment.

10 Okay. You mean the comment that – what they are addressing about not having shareholders was acceptable, is that what you meant?---Yeah. When I said that - - -

The independent recruitment agent?---Yeah. Yeah, that’s right.

15 Yeah?---The top of page 5 in this other document.

Yeah. Okay. You see, if you have a look back on page 4 please. You see your bottom comment in the box. You’re accepting their proposition of the two-year term?---Yes.

20

And it’s about that. This argument’s about that, saying we can’t always go to elections because these people are always trying to feather their own nest in a sense and you’ve got to comply with them to win the election. Isn’t that the logic?---Basically, yes.

25

And my point is; did you know that in the Andrews litigation when you were reading this thing that Mr Andrews won that litigation and what the judge found was that the constitution which required an independent recruitment agent had been meddled with and he in fact hadn’t acted independently. That’s why the litigation was in fact vindicating Mr Andrews’ position. Did you know that?---I can’t say whether I did or not at the time.

30

Okay. Just to – looking at the issues – the case for change on page 10. Have you still got that – the case for change document?---Yes.

35

Page 10. The first new paragraph on page 10, “In terms of the orders that have subsequently been handed down, in short QRL is required to re-commence the election process for two new directors starting with the compilation of a short list of candidates by an independent recruitment agent.” And then jumping one paragraph, “The inquiries have emanated from disgruntled persons within the industry who lack a preparedness to accept the necessary change that is vital for the thoroughbred racing industry and Queensland to survive and prosper. I think that’s your point, isn’t it?---I don’t know if it is.

40

45 Well, here’s – here’s my point. What it’s suggesting is the reason they took the litigation was they had an ulterior motive to create trouble because they had a vested



interest in the position and they wanted to cause trouble to the elections?---Well, that's what it says in this document, yes.

5 And, you see, that argument seems to have been accepted in the sense that in your comment in the other document that I was referring to, it says, "It is considered that a two year term would ensure that the directors are not constantly in election mode and would provide greater stability."?---Yes.

10 Okay. And then over the page to page 5 of your document. Have you still got that, yes?---Yes.

15 Thank you. And then in your comment on page 5 in the first paragraph, "As the control body is a regulator it is not appropriate for the members of the control body company to be licensees that the control body regulates. The involvement of a race club members, licensees or industry participants in the selection election of control body directors is a serious integrity threat." And that was the point, I think, that you were making?---Yes.

20 And that was an argument that Mr Bentley had run a few times before but certainly in this document?---Yes. That's right.

25 Okay. Now, would you go to 110 please, Ms Perrett. At the same time – this is a briefing note prepared by Doctor Philp, the Associate Director-General in relation to the question of the issues paper and it's being prepared for the Director-General for a meeting with Mr Bentley. You'll see at the top?---Yes.

30 On the 20<sup>th</sup> of November. And he – recommendation, "It is recommended that you note the following information and that a cabinet submission on a structural reform to the Queensland Racing Industry involving the proposals by QRL has been prepared by DEEDI for early in the new year." And then just have a look at the – under the heading key issues, those first four dash points please?---Yes.

35 It seems that at least Doctor Philp is taking a different view or a more critical view. Would you accept that?---Yes, I would.

40 And under the next heading QR proposed reforms and in the first dash point, the last two lines, there is a risk he raises, "There is a risk however that the smaller codes, particularly greyhound racing may lose influence and funding." And that could be a concern, I suppose, couldn't it?---Could be.

45 And then the third dash point, "The chair would face election in 2023."?---Is that correct?

I think it was 2015 it was being promoted, wasn't it?---Yes. I believe it was.

Yeah. And did you ever consider that it might be that the long term – that directors might be appointed could be a relevant consideration against advancing their time?---The fact that they'd already been in office for some time.

5 Yeah, yeah?---It certainly was an issue that was considered.

Yeah. I saw the Legal Services Unit raised it in earlier time in 2008 when you were preparing briefing papers. Do you remember that - - -?---I do now.

10 - - - and they were saying something like that. It's a question of whether they stagnate or something like that?---Yes.

Because these directors or at least three of them were appointed in 2002 as the head of the then control body for thoroughbred racing?---Yes.

15 So if they went through to '14, that'd be a long time. You know, 12 years?---Yes.

Is that something that you took into account in considering the case for change? The stagnation point I mean?---I think it may have been considered but I think the decision had been made within government that's that what would be happening.

20

Okay. Okay. Very good. Now, would you go to 130 please of the bundle. I don't know whether this minister's briefing note – I know it came out of the Office of Racing. Do you recall having any role in it?---I – I have seen it recently but I - - -

25

Can't remember a role?---I – well, I've got my initial on the bottom of it there so I obviously read it. If I didn't write it, I possibly - - -

Anyway, the main point of it I think is if you look on the first page under issues. The main issues you will be briefed on at the meeting are addressed in attachment 1 and if one goes over to attachment 1 you can see there a document that seems to set out what at least you've – or somebody's described earlier as issues. But when I read it, it doesn't really set out issues at all. It's just the proposal; you know?--- Yes.

30

35 That seems a bit soft on issues?--- Well, maybe the wrong word was used.

Yeah, that's right. But aren't these briefing notes as to make the Minister astute as to what they should be thinking, you know what I mean, in making a decision?--- Well, it depends what was requested I guess and what was – I mean, I'm just looking at the date of these. This is January 2010.

40

Yeah. Maybe I read too much into the word issues?--- So this would have been after there's been a couple of meetings. And I believe – I'm just thinking back.

45 No, you're right, there was - - -?--- In December, yes. There was the 18<sup>th</sup> of December meeting with - - -

Yes, of the chairs and the CEOs I think; wasn't it?--- Yeah, there was Cam Smith and - - -

5     Yep?--- And at that meeting – that's my understanding, that that's where the parameters of what was going to happen was decided then. We had the meeting on – out at Deagon, I think that was the 23<sup>rd</sup> of December.

Okay?--- And Bob Bentley had produced minutes from that - - -

10    Yes?--- Meeting. And I think some of this probably aligns to what was in that – those minutes.

Okay?--- And then there's probably other things here that we've included as well.

15    Okay. Let me just have a look at this for one moment. Yes. 115. If you go to document 115, I hope that helps?--- Yes, that's – no, that's not the minutes.

20    I think that's – you mentioned the one on the 18<sup>th</sup> but this is the one on the 23<sup>rd</sup>, I think; isn't it?--- I attended the one on the 23<sup>rd</sup>. I didn't attend the one on the 18<sup>th</sup>.

Okay. And do you remember this meeting at all on – there's particular parts I was going to ask you briefly about. It looked like the three different codes were represented by their chairmen?--- That's right.

25    And a number of government people and also CEOs or chief executive officers were also in attendance - - -?--- Yes.

- - - from each code?--- That's right.

30    And then in particular, over the page on 2, constitutional discussion. It looked like Mr Bentley was chairing this meeting?--- Yes, he was.

35    And looking under that part, Mr Bentley opened the meeting, outlining his views on a workable constitution and tabled a paper to all present for discussion. This paper is an attachment to these minutes. And then I see Mr Lette express some concern in the next paragraph. And then in the third paragraph, canvass the proposition that the new control body should have an independent chairman?--- Yes.

40    And then eventually, as has been pointed out before. Eventually Mr Bentley argued against that as a ridiculous proposition; do you see that?--- Yes.

Do you remember him saying "ridiculous proposition"?--- I don't remember his exact words.

45    Okay. And then the next paragraph, Watson agreed with the chairman and confirmed her view that if Mr Bentley was chairman then it was all no problem?--- Yes, that's right.

And then Mr Lette said it wasn't a deal breaker. So he gave in too - - -?--- That's right. Mr Lette was - - -

- - - to Mr Bentley's argument; didn't he?--- Sorry.

5

You go?--- Mr Lette was concerned about having independent directors on the board, I recall.

10 Yeah?--- And I think there were later meetings also with the Minister where he had expressed that view also.

Yes. And the thinking was, wasn't it, that he was concerned to ensure that all three codes got a fair go. You know what I mean?--- Yes.

15 Is that the thinking?--- I believe so.

Okay. And just turn over to page 4, please. It's titled "Agreed" – I'm sorry, it's not titled "Agreed". I think that what's agreed was the last notion. But under heading "Albion Park Harness" – I'll just let you read that, please?--- Yes.

20

And it looks like that minor code, if I can use that word. One of the smaller codes was looking for a commitment from the others so that they were protected should they say yes to - - -?--- Yes, he didn't want Albion Park to be sold.

25 Yeah, exactly. And you can see – could you see their predicament in agreeing to an amalgamation where they got one vote each, the minor codes I mean, and the thoroughbreds got three votes, for example. So they were going to win every time?--- Yes.

30 That was a problem for them that they were raising; wasn't it?--- Yes.

And then you see Logan greyhound. You see the same thing. Watson's raising that concern and seeking an assurance?--- Yes.

35 Do you remember those assurances were given by Mr Bentley?--- I believe they were.

40 Okay. And just excuse me one second, please. Later in the year – I'm sorry, not later in the year. In 2010, do you recall Ms Watson got removed from the board of Racing Queensland after it had been established?--- Yes, I do.

And do you recall that – the circumstances surrounding that?--- Yes, I have heard recently the evidence.

45 Okay. But were you involved with that at all at the time or was that an issue that came up with you?--- I don't believe I was involved.

Okay?--- I believe I was informed about it.

5 Okay, don't worry then. Thank you. I was going to ask you then to go to another document now, please. I'm sorry, it is in that bundle. 137, please. This document is a cabinet decision on the front page, 22<sup>nd</sup> February?--- Yes.

And then if you turn over, you see a policy submission, authority to prepare?--- Yes.

10 And I think that part of the document is from your department. I shouldn't say your - - -?--- The submission – the authority to prepare – yes, prepare submission, yes.

And then page 10, please. I should first ask you, do you remember playing a role in this part of the business of the Office of Racing?--- Yes, I would've.

15 Okay. And page 10, please. It seems under the heading “Consultation – Community”, paragraph 44, it is not - - -?--- No, I think I'm on the wrong page.

Yes, okay. Sorry. 10 at the top?--- Up the top?

20 Yeah. And then I went down to the heading “Consultation”?--- Yes.

Under the heading “Community”, 44, “It is not proposed to undertake any community consultation”?--- Yes.

25 Where did that view or that position come from; can you recall?--- I don't recall where it came from. But it wasn't unusual in racing submissions not to have community consultation. It was often consultation with the control bodies or just with particular groups. You know, it might have been the bookmakers' association and some groups. But - - -

30 Well, the fact that it mightn't happen often is one thing. But whether or not it was sensible, that is to have community consultation, or not on this occasion might be another thing. But what was happening was the Office of Racing were promoting, were they not, no community consultation?--- I – I don't know if it was the Office of  
35 Racing – was promoting it. But the cabinet submission would've gone right through the department and through the other agencies so it wasn't just our view that there wasn't to be consultation.

40 No. But the word “just” is very important. “Not just our view”, but it was the Office of Racing's view; wasn't it?--- Probably, yes.

45 And that came consistently with the view from Mr Bentley and the board of Queensland Racing; didn't it? He was against community consultation too?--- I don't know if that was the reason why the government didn't undertake consultation.

No, but it was his view. He'd been selling that for a long time; hadn't he? Remember he was selling that back at the stage of the case for change. Suggesting that if you get the stakeholders involved, it ends up in a nightmare?--- Okay, yes.

5 And then if you look on the page 11, "Results of Consultation." You see industry, potential criticisms in paragraph 53?--- Yes.

It seems to anticipate that there will be criticism from certain corners of the industry?--- Yes.

10

Third line, "When the content of the constitution of the new control body becomes public knowledge, criticism is likely to focus on the membership of the new control body as the current class A members are not members of the new control body"?--- Yes.

15

And that was something too that Mr Bentley was advancing; wasn't he? You recall back in that case for change?--- Yes.

20 And then just 138, please, Ms Perrett, please. At 1.38, I see an email from you to David Grace?--- Sorry, one - - -

138, please?--- Oh, sorry. I'm on 139. Yes.

25 What it records to them – that is Grace, the lawyer for Queensland Racing – "is attached is an outline of amendments that are required to be made to the draft constitution. I will call you to discuss Carol." You see that?--- Yes.

30 Could you tell me why it was that all this was going to Mr Bentley and not to the other chairs, because they were going to be part of it too; you know what I mean? Anyway, it may have been something you were directed to do?--- Well - - -

But it just seems funny we're going to Bentley with the - - -?--- Well David Grace and Cooper Grace and Ward, they were the firm drafting the constitution.

35 Yes?--- They were Queensland Racing's - - -

Yes, exactly?--- Lawyers and Shara Murray was involved, yes.

40 Anyway, the point is if you go over the page you see what is – what was annexed or seems to be annexed, amendments to the constitution of Racing Queensland Limited?--- Yes.

45 You see that? And these amendments are amendments that were being proposed from your side, from the Office's side, I think; weren't they?--- That's right.

From the Government. And look at the third dot point. I'll just let you read that, please?--- Yes, I've read that.

Do you remember that?--- I do.

5 And then if you go to 139, there was a meeting – and I’m just going to tell you what this is in a minute. But I’m suggesting to you there was a meeting on the 11<sup>th</sup> of March, which is – your email was the 5<sup>th</sup> of March – on the 11<sup>th</sup> of March, when this email that you had sent with the proposed amendments to the constitution was discussed with those present: Mike Kelly, Carol Perrett, Lara Dawson and Mr Grace?---I don’t remember attending it, but I obviously did.

10 No. Okay. Well, you don’t have to accept the note either, but it looks like it’s a contemporaneous note of the lawyer for Queensland Racing and – anyway  
- - -?---Yeah, it looks - - -

- - - the point is - - -?---Yes.

15 - - - the third dot point he seems to record – third dot point – “agreed. This is intended to be a motherhood statement, and there is no further significance than that”. Just reflecting on that, that’s the statement about the control body acting in the best interests of the three codes when you’re talking just to one code, meaning the  
20 proposed new chairman. You know what I mean?---That clause was actually put into the legislation as well, as being in the constitution.

25 Yes, yes. But in particular, here the statement “motherhood statement” being made to Mr Bentley – to the lawyer for Mr Bentley’s company or the company he was chairman of – of Racing – of Queensland Racing – what did that mean? What  
- - -?---I don’t remember that.

30 Okay. But do you know what motherhood statement means?---Just as a statement that’s - - -

Doesn’t mean anything?---Yes. I certainly don’t remember a discussion on that. But then, I don’t remember going to that meeting either.

35 Okay. And could Ms Perrett see the next folder, please, which is folder 5.

You’ll recall while this is coming, Ms Perrett, just to put it in context, what we were talking about there was efforts being made to amend the constitution for the new body, Racing Queensland?---Yes.

40 The amalgamated body. And what seems to have occurred was that, as you said, Mr Grace drafted it and then it went back and forward a bit - - -?---Yes.

- - - for consideration. And then I wanted to show you this document at 171, please. I’m sorry. Did you have 171? Or 171A I should have showed you?---I’ve got 171. I  
45 don’t see a 171A.

Does yours - - -?---This is an email from Anthony - - -

COMMISSIONER WHITE: I think there is there. It might be hidden behind the other tags.

5 MR BELL: See, we've got tricks here. This looks like an email from you about it?---Yes, it does.

About the constitution. I'll just let you read it quickly?---Yes.

10 And what's happening, I think, there is – looking back a little, just over the page, it looks like at first Lara Dawson has sent to you the draft of the new constitution?---Yes.

And then you have attached it and sent it back with comments, I think?---Yes.

15 You okay there? Okay. And then if you go to 176, please. And this seems to be the Minister's briefing note. I think that it looks like you were the action officer for it?---Yes, I was.

20 And you were involved there. And you see there on the first page under Issues, the second paragraph, "A summary of all key issues addressed in the draft constitution is attached." See that?---Yes.

And that's attached in 4. And if I just ask you to go there, please?---Attachment 4?

25 Yes, please?---To this briefing note, is it?

Yes, please?---Hang on. I'll just – I can only see attachment 1. Thank you. Yes, I've got it now.

30 And in the briefing note to the Minister, just me looking at the first page – don't go back to it – it says, "A summary of all key issues addressed in the draft constitution is attached," and then it says "attachment 4". And then I go to attachment 4, and it does say at the top, "Summary of draft Racing Queensland Limited constitution," which is really a good description of what it really is. It looks like a summary rather than identifying issues in it for consideration?---That's right. It's just a summary.

35 And look at the first line of it. It says, "The following is an outline of the key issues contained". So it's a little bit confusing, isn't it? I mean, it really is just a summary. It's not identifying issues for the Minister, is it?---That's right.

40 Okay. And then if you go to 176A. I hope somebody can help you find that?---Control body approval notice?

45 Yes, please. What happens is it would seem that the constitution – I'm sorry. The control body is approved, that is, Racing Queensland as the amalgamated body is approved, under the legislation, but the conditions of approval are that Racing Queensland must adopt the draft constitution, looking at condition 1?---Yes.



And that was the draft constitution that you had explained in the – not you, but the office had explained to the Minister with the summary - - -?---Yes.

5 - - - isn't it? Now, you recall after that what happened was it envisaged a very different make-up in the sense that there were no members other than the directors?---That's right.

10 Previously in the QRL, a thoroughbred one there he had the class A members and that was the part that Mr Bentley had advanced in the case?---Yes.

The case for change to get rid of them and that in fact occurred, didn't it?---Yes.

15 Okay. Now, I'll just show you one other thing please. 131 please, Ms Perrett?---This one's [indistinct] thank you.

20 Ms Perrett, you may – I'm showing you this to try and refresh your memory about one issue that seems to have arisen leading up to that approval that we've just talked about. What seems to have happened by reference to this was this idea of the amalgamation and the constitution was that Mr Lindsay from the Premier's Officer had raised a concern about consultation with the industry?---Yes.

25 And it was back and forth about that where he was advancing that consultation was an important thing that should've taken place. Can you recall that interchange back and forward between your office and him?---Yes.

And what was that about. If you want to go to the documents, we will, and I will take you to the documents but can you recall the substance of it?---Not just off the top of my head. If I could have a look at the documents I might - - -

30 Okay. So just going to that first one of 131 please. You see halfway down the page it says he's talking about certain sections in the legislation and he starts – and you start saying to him, “The purpose of the following amendments is to provide protection for the two minor codes.” You see that?---Yes.

35 And then you see at the last paragraph, “Therefore the overall objective is not to provide more autonomy to the control body balanced by greater ministerial powers to intervene if necessary, but to provide protection for the minor codes in greater clarity of the existing powers.”?---Yes.

40 And if you go to 132 please. You'll see this is a – this is Mr Lindsay in briefing his minister in relation to the proposal for amalgamation on the 5<sup>th</sup> of February. And you'll see under purpose, “to seek cabinet approval for the amalgamation and the approval for the preparation of the change to the legislation.”?---Yes.

45 And then in number 5, “controversy is likely over the proposed removal of current provisions that establish the Country Racing Associations.” And then in number 10, “No stakeholder consultation has been undertaken on the reforms outside the existing

three control bodies and none is proposed prior to the legislation being introduced.”  
And then underneath that in 12 and 13, it seems that he’s got serious concerns at least  
about that lack of consultation?---Yes.

5 And in the – if you go to 133 it looks like he’s directing that issue of you – you on  
behalf of the office, I should say. You’ll see there in the bottom half of the page he  
sends you an email and in the second line he says, “On this basis the Department of  
Premier and Cabinet position is” dot point number 2, “however there are serious  
10 concerns over the lack of consultation, impact on regional groups and the removal of  
guaranteed funding allocations to the smaller - - -?---I don’t know if I’m in the right  
spot here.

Yes. I’m sorry. It’s - - -?---Is this the email of the 9<sup>th</sup> of February?

15 Yes. It’s just the bottom one. See down the bottom. Yours is the top. About  
halfway down the page it says Carol?---Yes, I see it.

Okay. And I was looking about seven lines down where it says, “however there are  
- - -?---Oh, yes. I’ve got it now.

20 Okay. “However there are serious concerns over the lack of consultation, impact on  
regional groups.” And you, above, say, “Thanks Nick and I know that your position  
was you are going to address that no doubt.”?---Well, that would be what normally  
would happen.

25 Okay. And you see at 135 on the 17<sup>th</sup> of February he’s still expressing these  
concerns looking down the bottom at paragraph 12 and 13, “Consequently, DPC  
remains concerned about the lack of consultation.” 13, “Support subject to close  
consultation with DPC and Treasury to finalise legislative amendments.”?---Yes.

30 I was just wondering, do you recall that the position of the office was against  
consultation and they continued to push back on that? Do you remember  
that?---Yes, that’s right. That was - - -

35 And who was directing you to do that? Was that Mr Bentley or?---No, it wasn’t Mr  
Bentley.

Was it Mr Kelly? Or were you doing it? I’m just trying to work out who had this  
idea that consultation was bad for business?---I would imagine that would’ve been  
40 discussed within the department and that would’ve been the view of the department.

Okay?---I wouldn’t have just decided myself.

45 No. I’m sure you wouldn’t. And that’s why I was asking you who had say in  
that?---Well, the cabinet submission would’ve gone - - -

Around?--- - - - from me to Mike Kelly up to David Ford to the Director-General, to the Minister's office so all those people would've had some input into it.

5 Okay. But Kelly was never at this time in favour of consultation, was he?  
Community consultation on this issue?---No. As I said it wasn't something that happened very often with racing submissions.

Okay.

10 COMMISSIONER WHITE: By community consultation, Mr Bell, I take it you actually mean racing industry consultation - - -

MR BELL: I do.

15 COMMISSIONER WHITE: - - - rather than the broadest community?---Yes.

And you understand it in that sense?---Yes.

20 So talk to the trainers and the clubs and the jockeys – anyone who's got an interest in the industry?---Yes. As I said, on occasions we did – we would consult with for example the bookmakers association and other associations but in this instance no, well that would appear that wasn't the case.

25 Some years of course before all this happened – quite some years ago there was an extensive white paper prepared after a year of consultation across the industry when significant change was thought to be necessary when the Racing and Betting Act was seen to have outlived its usefulness and the new Racing Act was going to come in 2002?---Yes.

30 In your time was it ever contemplated that you might actually do something like that because it did seem from reading the contemporary papers of the time and the parliamentary debates then that the whole process had widespread support across all the parties and the parliament representing those who made representations to them from the various - - ?---I do remember that there was a ministerial paper put out and  
35 calling for submissions.

Well, this was I think when Sir Llew Edwards was the Treasurer and he was also the Minister for Racing?---That was before my time.

40 Did anyone talk about that being a good model?---Well, as I said that probably was probably before the Racing Act, just before the Racing Act came out.

It was and it brought in the Racing Act as I recall?---Yes. We did. Well, a paper was put out but it wasn't when he was the minister and we did - - -

45 Are you thinking of when Minister Rose was the Minister for Racing?---That might have been it, yes.

All right. Thank you?---I don't believe there was consideration to doing that at this particular time, no.

Right.

5

MR BELL: Okay. See if I can go to the 142 please. This is an email from yourself to Mr Lindsay coming to the end of this issue?---Yes.

10 Certainly, it's right to say, isn't it, that insofar as you were drafting up that part for the note on the consultation issue, you were saying that the draft meant that there was going to be no further consultation?---Yes.

15 Okay. And then 144 please, just to try and conclude it a little more quickly. You'll see there you write back to him on the 30<sup>th</sup> of March, "We are still working on the consultation issue and we'll have that to you later today."?---Yes.

20 And just look over the page there just within that divider. You'll see what he has written to you, Lindsay I mean, "Carol, our brief has not been signed off yet and the Premier has not yet signed off on the revised drafting instructions. But here are our main comments to date." Dot point 1, "It is unclear how the proposed code will ensure the welfare of the minor codes. In addition to the further information you supplied on consultation, include a risk analysis of not undertaking the wider consultation, including identifying stakeholders." So he's still pushing back on this question, isn't he?---Yes.

25

Okay. And in the end – if you don't mind going to 146 – it looks to me like Mr Kelly takes over. He includes you on the 31<sup>st</sup> of March, and he writes, "Nick, if you cannot identify actual concerns" – and then in the second - - -?---Sorry.

30 Are you - - -?---This is 146.

That's right. 146?---Oh, yes. I've got it.

35 Yeah. About halfway down, you see that second paragraph after – it commences "Nick" and then it says, "if you cannot identify"?---Yes. I've got it.

40 And then the next – "There is no intention to provide equitable funding to any code. The fund goes to the one control body, not a code. Are you suggesting that each code gets 33 and a third per cent of the revenue, because that is what equitable funding means. We can waste no more time on this." So I think there'd been a lot of push back and forward about this consultation, and in the end Kelly came over the top and - - -?---Yes.

45 - - - that was that. Now, that wasn't the end of it in a sense, because – do you recall that the governor raised - - -?---Well, Mike Kelly's referred this up the line, it looks

Yeah?--- - - - to David Ford and to the Minister's office.

Yes. Do you recall that the governor raised the lack of consultation too?---The governor?

5

Yeah. The governor?---I don't recall that, but - - -

Okay. Let me show you something. Do you mind having a look at 146, please. I'm sorry. Not 146, 167. I'll just let you - I'll just help you with this. Do you see its attachment, Governor's Brief? Have you got that?---Yes. I've got it.

10

Okay. "Carol Perrett to Nicholas Lindsay re Governor's Brief, Racing Bill", and then "See email below re consultation. In the meantime I've tracked a couple of changes to dot point number 3 under Stakeholder Consultation. It would be more accurate to say individuals in race clubs. For a race club not to support the amendments it would need to hold a meeting and vote on the issue. I doubt that this would have happened in many cases. So the Country Racing Committee only voted on the new country racing arrangements, not the whole amalgamation or the bill. Regards, Carol." Now, my point is this would be very unusual, would it not, for the governor to ask for a briefing on this?---Well, we normally do - we do monthly briefing notes for the governor. So if there's any issues that come up, for example, new legislation, we would prepare a briefing note for the governor.

15

20

Okay. But it's clear, isn't it, that what somebody was concerned about to address the governor on was consultation?---So this - can I just have a look at - read this email.

25

Of course you can. Yes, please?---Well, just from looking at that I would assume that this is just the normal governor's briefing note, and it looks like - - -

Have a look over the page?---Yeah. Justin - - -

30

Yeah. Look on page 2, about middle of the page - Justin Murphy, Mike - - -?---Yes.

To Mike Kelly?---Yes.

35

"Please find the draft of the governor's briefing note for your review. The premier's office has asked for additional detail in relation to the club peak bodies individuals the Minister consulted in relation to the amendments. Can you please contact your Minister's office to provide some additional information along these lines. Half a dozen examples of the consultation of clubs or peak bodies should be enough"?---Yes.

40

So it's a bit of a concern, would you agree, to provide information to the governor about consultation or lack of it?---Well, yes. It would appear that premier's have decided to include that in their briefing note to the governor.

45

Okay. And just looking over at the note, the briefing note for the governor – and that seems to be the question. You see Key Issues – Benefits, and then it says Stakeholder Consultation?---Yes.

5 And then if you wish, Background over the page, etcetera. So the proposition I'm advancing to you is that at least in May 2010 before the legislation went forward to law, it was at least thought sensible to brief the governor on consultation. Somebody must have been concerned about that?---It would appear so. Yes.

10 Yeah – or lack of it – lack of consultation or the consultation involved. Don't you agree with that?---Yeah. Yes. Well, it's in the briefing note here, so they must have. Yes.

Okay. Now, I want to turn to another topic now, Ms Perrett, please. This is folder  
15 number 6, please?---Yes.

Do you recall – just to introduce it with you – in 2012, coming up the end of the term of the Labor government last year, that business cases were being drafted or  
20 - - -?---Yes.

- - - attempted to be drafted by Racing Queensland, because that was essential to obtain the money from the government? And you had assisted them in preparing those business cases?---Yes.

25 And was that because they lacked the capacity to do it with sufficient detail that would satisfy the government?---That was the main reason. Mike - - -

And had you attempted to tell them what was necessary and it hadn't worked or they hadn't got it?---I had attempted just to give them feedback on them, but it was taking  
30 too long and they weren't - - -

They weren't getting it?---Yes.

35 So what happened was, I think, to – just looking at 218, please. I just want to use this one, Cairns, as an example of what happened. And it looked – just to give you the conclusion at the end, it looked like in the end you were very much involved in helping them get it right, would you think? I'll just start - - -?---I – yeah. I know I – I – I would've probably done some work on Cairns. I know Beaudesert I did, because that was the first one.

40 Yeah?---I spent a fair bit of time with them on that, but Cairns was probably one of the next ones.

45 Okay. Just have a look at it. I was going to use Cairns just to make the point and have you comment. 218 – tell me when you've got 218?---Yes. I've got it.

Snowdon sends you the draft business case for Cairns?---Yes.

You see that? And then if you look at the business case you can see, yes, he's put it in draft there. Are you okay so far?---Yes.

5 And then the next – 219, please, and about three quarters the way down the page it's got tab 219 on it. Do you have that on yours? And it's got next to your email back, Carol Perrett to Snowdon. Have you got that?---Yes.

10 "I started looking at the business cases last night and will get back to you as soon as possible," and then 22, please. And he sends you then, if you can recall, missing appendices from the draft business cases. In particular you see appendix C, Purchasing Policy – Standard Document?---Yes.

15 Okay. So clearly enough, he'd sent you something that was incomplete. And then 221, this looks like Mr Kelly was also assisting, and he drafted a section of the business case, or I should say redrafted a section of the business case, and he gave it to you for your consideration?---Yes.

20 And then 222, please, you see on the 27<sup>th</sup> of January you attached back the track changes to the draft?---Yes.

Okay. Just looking at it – with respect to them and credit to you, it looks like a lot of work was done in making changes?---It does. Yes.

25 Have a look at page 4, for example. I'm just going to flick through quickly, but all the pages through, a great deal of work has been undertaken by you to assist and get it right. See that?---Yes. They weren't very good at writing English.

30 And then in – on page 9 – in fact, this is the part that Mr Kelly had a go at, meaning assisted with?---Yes.

35 And in fact, at the second half of the page you can see that he made some changes of substance, in the sense that he changed around the thinking. And why I say that is if you look at the second paragraph, what they had was "Within Racing Queensland, the responsibility of overseeing the delivery of the project in line with the purchasing policy resides with the plan control group. The project director has day to day management of the plan, delivering compliance and reports to this group which sits over the project director." See that part? And then down, what - - -?--- Yes.

40 - - - Mr Kelly helped them with, it changes a little bit; doesn't it?--- Yes, I'll have to read it.

45 It's okay, we can all do it later. But it looks like Mr Kelly was very much involved in helping them get it right so that the government, Treasury for example, would be more likely to accept it than in the original form?--- Well, it needed to be in a form – yeah, that was suitable for government.

Yep. Because we were under the pump. It was getting rushed now; wasn't it?--- I don't know what date we're up to here. What is it, January – end of January?

Yeah?--- Yes.

5

At the end of January, weren't people concerned to get these things done so that they - - -?--- Yes, well we've been a concern for quite a while to get them done. And we'd spent an awful long time on Beaudesert trying to get that right. That was to be the template. And once we got that right, then the others were to follow.

10

It was supposed to flow with their work but it didn't flow. You had to do it for them?--- Yes.

Or help them do it, I should say?--- Yes.

15

And Mr Kelly was assisting too; wasn't he?--- Well, it looks that way, yes.

Yeah. And would you go to 223, please. I wanted to show you another example of what we're talking about. What we're talking about, I mean, is the assistance that the office, you and Mr Kelly, were giving to Racing Queensland because they weren't able to put in the right form for Government's acceptance, some of these important documents. That's what I'm getting at?--- Yeah, I mean, some of the – when I look back at that one where they'd written someone sits over someone else and - - -

20

Yeah?--- I could – it just doesn't flow very well and - - -

Yes, yes. Well, there was a concern about who the project manager was and that sort of thing. And they were trying to get the pitch – you were trying to assist with the pitch so that Treasury wouldn't be concerned about the way they were going to do it and who was managing, etcetera?--- Well, it needed to be clear to that everyone understood exactly what was happening.

30

Well, in fact, we'll look. If you wish, you have a look at the one later that I've just shown you. And if you want to put in a further statement to explain it – but it looked like Mr Kelly was sort of making it look better than the way they had meant the structure to be. But anyway, you have a look at that later?--- Yeah, I'd have to have another look at that closely.

35

Okay, thank you. Anyway, I was going to show you 223 quickly, please. And you see that this is an email from Shara Reid at the foot of the page to you and to other people. But - - -?--- Yes.

40

- - - including the amended industry infrastructure plan; can you see that?--- Yes.

45

And then you assisted them with this too, I think; didn't you?--- I don't believe I assisted them with that one.



Okay, let's have a look at 224. So it looks like what happened was it – looking at the middle, 224, you see Perrett. You send it on to Mr Kelly?--- Yes.

5 And Mr Kelly sends it on to Mr McCabe?--- That's right.

And 225, please. I think that might be the same chain. And then 226. Mr Kelly's sending it back – I'm sorry. Mr McCabe's sending it back to Mr Kelly. And he says "call me"; do you see that?--- Yes. It was my understanding that it was Mr McCabe who made the changes to that document.

10 Okay. And if you look at 227, Mr Kelly's sending it back to Mr Bentley. "As discussed, changes to Friday document is attached."?--- Yes, that's right.

15 Okay. And there you can see, by looking at the track changes again, a deal of hard work's been done on getting this document right?--- Yes, but I don't believe that was the Office of Racing that did that.

20 No, that was McCabe through Mr Kelly. But what was happening was obviously Bentley was having it given back to him by Mr Kelly?--- Yes.

All right. And 227A, please. And it looks like that Racing Queensland are making more changes to it?--- Yes.

25 And then 227C, please. And he, Kelly, is sending it up the line to Mr McCabe?--- Yes.

And then if you don't mind going back to 227C, I think is the right order, if I've got this right?--- That's what I want.

30 COMMISSIONER WHITE: B?

MR BELL: B. B. B; is it? B, yes. Of course it's B?--- B is - - -

35 Thank you. 227B. Kelly back to Shara Reid and Shara has discussed with Bob Bentley. His words are used in the exception of the country inclusion in – on page 4. So there's a lot of traffic going back and forward, I think, at least through the Office of Racing where people are assisting Racing Queensland get it right so it will be sufficient to get the money?--- Well, sufficient so that it can be understood – clearly understood by everyone who needs to consider it.

40 Well, that first. But also there were changes being made so that it was sensible, too, and saleable - - -?--- Yes.

45 - - - to Treasury, including the plan?--- Yes.

And was that – do you recall by this time that people were becoming conscious of the time limit and were starting to move along to get – call this done before there be an election?--- Yes.

5 Yeah. Okay. And just to understand that finally, Ms Perrett. From your experience during that time in early 2012, did you reach the view that without the assistance of yourself and the office, Racing Queensland didn't have the ability to produce those business cases in the appropriate form that would have achieved the payment of the money from the government without your help?--- Well, I think it just made it a lot  
10 easier for Treasury to understand what exactly they were trying to say by helping them, yes. Otherwise - - -

And I think?--- It was quite convoluted and - - -

15 I think the word "yes" at the end - - -?--- Yes.

- - - means yes, that's exactly what was happening. Because we were under the pump time-wise, or at least they were, they wanted the money to come from Government. But it wasn't going to happen unless it was put in format and  
20 appropriately done by – with the assistance of the Office of Racing?--- Yes.

Okay. Yes, thank you, Commissioner.

25 COMMISSIONER WHITE: Mr MacSporran – I'm just going to ask him if he has any questions for Ms Perrett.

MR BELL: I think he's right. Ms Perrett, thank you for coming along. We can't completely excuse you but it's very unlikely we'll be asking you to give further evidence so thank you?--- Thank you.  
30

COMMISSIONER WHITE: Thank you, Ms Perrett. Mr Bell was correct in that I take it, Mr MacSporran?

MR MacSPORRAN: He was, Commissioner. Yes. He must have read my mind.  
35

COMMISSIONER WHITE: That's very clever of him indeed. Yes, you can stand down. Thank you.

40 **WITNESS STOOD DOWN** **[4.15 pm]**

MR BELL: Commissioner, tomorrow I think we have one witness, Mr Fraser. It's a half day as you know. Normally the Friday starts at 9.30 but we'd hoped that we  
45 could start the hearing tomorrow at 11. We have some other activities going on within the Commission before that time.

COMMISSIONER WHITE: Mr Bell, that's - - -

MR BELL: But we still think we'll finish Mr Fraser by lunchtime.

5 COMMISSIONER WHITE: Tomorrow. Tomorrow, all right. Mr Burns, you represent Mr Fraser; don't you?

MR M.J. BURNS: I do, Commissioner, yes.

10 COMMISSIONER WHITE: Yes. So does that disturb you unduly?

MR BURNS: No, not at all. Thank you.

15 COMMISSIONER WHITE: All right, then. And I hope it's convenient for everybody else. Mr Rogers.

MR ROGERS: Yes, Commissioner. Just one matter while it's now the end of the day. We have the unresolved issue of the Crown Law advice which is still in the courtroom, together with some jottings I've made as well which will stay with it.  
20 I'm loathe to leave it in the courtroom overnight. Perhaps I should just record - - -

COMMISSIONER WHITE: Well usually tightly – it gets locked up. What about if Ms [indistinct] looks after it then?

25 MR ROGERS: Well, I was just thinking it might be easier for me to hand both documents back to Mr Thompson.

COMMISSIONER WHITE: Well, he was the distributor of that large S in a sort of small way; wasn't he?  
30

MR ROGERS: Well, yes.

MR THOMPSON: I think my learned friend Mr Bell in fact is the - - -

35 COMMISSIONER WHITE: Goodness me, I – we've been having a lot of evidence about passing the buck, Mr Thompson. Would you like mine back too?

MR THOMPSON: No, Commissioner, you keep yours. I'll take possession of this one, thank you.  
40

COMMISSIONER WHITE: All right. Thanks, Mr Rogers.

MR ROGERS: Thank you, Commissioner.

45 COMMISSIONER WHITE: Thank you all. We'll resume then tomorrow at 11 o'clock.

**MATTER ADJOURNED at 4.16 pm UNTIL FRIDAY, 4 OCTOBER 2013**