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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, MONDAY, 30 SEPTEMBER 2013**

**Continued from 27.9.13**

**DAY 9**

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**RESUMED**

**[10.01 am]**

5 COMMISSIONER WHITE: Mr Pincus.

MR T. PINCUS: Commissioner, the first witness today is Mr Andrews: if he could be brought in please?

10 COMMISSIONER WHITE: Mr Andrews, would you come forward please?

**BILL ANDREWS, SWORN**

**[10.00 am]**

15 **EXAMINATION-IN-CHIEF BY MR PINCUS**

MR PINCUS: Mr Andrews, you have been given notices by the Commission to produce documents?---That's right.

20 And you produced some documents on or about the 10<sup>th</sup> of July?---That's right.

You've also given statements in response to a written requirement, the first sworn on the 25<sup>th</sup> of July, and a supplementary one sworn on the 27<sup>th</sup> of August?---That's correct.

Commissioner, I have no further questions at this stage; Wilson does.

30 COMMISSIONER WHITE: Yes, thank you. Mr Andrews, Mr Wilson I think is going to ask you some questions now. Thanks, Mr Wilson.

MR K. WILSON QC: Thank you. Mr Andrews be shown his statement of the 25<sup>th</sup> of July, please?

35 COMMISSIONER WHITE: Yes, certainly.

MR WILSON: And you can identify that, Mr Andrews, as your statement?---It is my statement.

40 You're a director of Queensland Racing Limited since January 2005, until in – towards the end of 2009?---December 2009.

And for the same period you were a director of Queensland Product Co Proprietary Limited?---That's correct.

45 Attached to your statement is a copy of what is called a product and program agreement. You might- -?---Yes.

- - - see that?---Yep.

Is that a – the copy that you retained?---How would I know that? I’m pretty sure I did have a copy.

5

The only reason, Mr Andrews, is I’m going to take you to some handwritten notations in the document; I just wanted to make sure that they’re yours. On pages- - -?---Perhaps you can direct me to the page?

10 13 and 15 I think they are?---No, that’s not my writing.

So whose- - -?---Certainly on 15 it’s not my writing.

What about on the bottom of 13?---I’ve got no writing on the bottom of 13.

15

Sorry, I’m looking at page 13 of the document, not the big number in the circle.

COMMISSIONER WHITE: Try the next page, it’s got- - -?---Okay. On page 13, that’s not my writing, and no, that’s not my writing, I’m sorry.

20

MR WILSON: Do you know where you got the copy of the document from that you exhibited to your statement?---It was a photocopy. It was photocopied on yellow paper I recall. So somebody gave it to me.

25 Do you know whose writing that is?---No, not really. It – no, I don’t, sorry.

In your role as a director of – if I can call it Product Co – did you familiarise yourself with the contents of that document?---Look, I wasn’t – 100 per cent for me with it, but I had a knowledge of what it contained. Yeah, I had a knowledge of what it contained generally, but I – you know, I couldn’t take you to page and verse of the document itself; it’s a very long document, with a lot of annexures.

30

But you knew the basic structure of the document?---Yes, that’s right.

35 And what Product Co was obliged to do under the document?---Yes, that’s right.

And what Tatts was obliged to do under the document?---That’s right.

Now, in paragraph 21 of your statement – if you want to just check that – you summarise your understanding of the effect of the agreement. Is that right?

40

COMMISSIONER WHITE: Just take a moment to have a look at paragraph 21, Mr Andrews. There’s not – you really don’t have to rush your answers?---Yes, that’s correct.

45

And in the sixth line of that paragraph, perhaps going up to the fourth line, you say, "Pursuant to the agreement, Product Co agrees to supply three items of information to TABQ for its exclusive use in its wagering business."?---Yes, that's what it reads.

5 It was your understanding that under the PPA, under the product agreement, the only person that Product Co supplied the information to, subject to one exception I'll come to, was to TABQ?---That's right.

10 And are you aware that in the product agreement there was a schedule 4, which was a list of other entities that Product Co was allowed to provide to allow the information to?---I recall that, yes. That's right.

15 And you recall that schedule 4 was amended substantially by way of an addendum? If you want to check the agreement, do so?---Yeah. You'd have to point out that ---

If you go to schedule 4, I think it's after that?---Schedule 4: yes, I see it.

20 You'll see on the first page is a limited number of entities, and then if you turn over I think – at least in the copy I have – there's an addendum. You see that?---I see that.

25 And you accept that schedule 4 are those entities that are referred to in clause 7.5 of the Product and Program Agreement as entities that Product Co has allowed to provide the information to?---Look, I'll take your word for that.

30 Are you aware from the Product and Program Agreement how the situation was dealt with if Product Co supplied either the racing calendar, the racing program, or the racing product to someone other than Tatts or a schedule 4 person for a fee?---I thought all of the racing information was provided by RISA. We provided the information to – no – RISA provided that information, I understood.

35 Right, so your understanding is that under the agreement Product Co in fact supplied nothing?---Look, there was – yeah, that – look, that may be – may have been the case.

40 Did you ever turn your mind to – and I'm coming to the race skills legislation that was introduced in 2008/9 – did you ever turn your mind to whether Product Co was allowed to supply any of the race information to entities other than Tatts or those people nominated in schedule 4 under the PPA?---No, I didn't.

Are you aware whether that became an issue or a topic of discussion in the second half of 2008?---No. I wasn't privy to that – those discussions.

45 Now, you are aware, aren't you, that in the second half of 2008 it became a topic for discussion at both QRL and Product Co that New South Wales was proposing to charge – or sorry – firstly, had introduced what's called race deals legislation?---Yes, I'm aware.

And secondly that it proposed to charge Tatts a fee under that legislation?---I'm aware.

5 And there was some discussion as to whether Tatts could offset or deduct the amount that it was paying in New South Wales from the amount that it paid to Product Co under the PPA?---What part of the year are you talking about exactly?

Well, you tell me?---Well, there was no discussion at board level, basically, from my recollection. It only became an issue when we got the grace letter of advance.

10 When you say "at board level", distinguish between Product Co and QRL?---Well look, I don't recall any – any discussion as to the lawfulness of the deductions by – by Tatts to Racing – Queensland Racing.

15 Were you aware – just to put it in context for you, Mr Grace's advice is dated the 18<sup>th</sup> of November - - -?---That's correct.

- - - 2008?---Yes.

20 You were aware, weren't you, before that date of Tatts' intention to deduct the amount that it paid in New South Wales from the fee paid under the Product and Program Agreement?---Yes. I'm aware.

And you thought it was entitled to do that?---I did think that at the time.

25 And so far as you're aware – you can't look inside their mind, but from the discussions you had with them that was also - - -?---I didn't have discussions with Tatts.

30 No, no – discussions with other directors of Product Co?---Yes.

That was also their view?---Oh, my understanding – yes.

35 So when Tatts deducted – Can I just elaborate - - -

Yes?--- - - - perhaps – and I shouldn't, but it was always put to us that we were going to be a net exporter of – of – of money so that we were going to benefit – it was always put to us that we were going to make money off the race fields information more so than – than losing.

40 COMMISSIONER WHITE: And when you say "it was put to us", Mr Andrews, who - - -?---The chairman.

- - - explained it in that way to you?---Yeah. The chairman did.

45 The chairman - - -?---Mr Bentley.

Thank you.

MR WILSON: And are you aware that Mr Lambert also wrote some papers that made that same point?---No. I haven't come across those to - - -

5

But just dealing with your understanding, it was that if Queensland was a net exporter then even if Tatts was deducting the fee it paid New South Wales, Product Co would be ahead - - -?---Yes. That's right.

10 - - - if race fields legislation was enacted in Queensland?---That was – it was lay down misere that that was going to happen.

Yes. But there's a necessity for that legislation to be introduced - - -?---Yeah.

15 - - - to enable - - -?---Yes.

- - - either Product Co or QRL to charge a fee?---That's right.

20 And the expectation was that that fee charged by QRL would exceed the amount deducted by Tatts?---That's right.

25 Do you know whether – and I appreciate you were there towards the – until towards the end of 2009 – that situation came to pass? That is, the amount that was collected under the race field legislation was more than the amount that was deducted by Tatts?---No. I'm not really sure of that, but I take your word for it.

No, no. I didn't suggest to you that it was; I asked whether you were aware of it?---No. No.

30 COMMISSIONER WHITE: Don't – you don't have to accept - - -?---Yeah. Yep.

- - - any propositions put by counsel, Mr Andrews, just because it's a long time and you might have difficulty - - -?---Yeah. Yeah.

35 - - - in recalling these things. If you just don't know just say that, would you?---I'll say don't know. Yeah. Thank you.

Thanks.

40 MR WILSON: And just to finish that point, the intent of the race fields legislation was twofold: one was to try and capture people who weren't already contributing to the industry, that is, for example, corporate bookmakers based in the Northern Territory and betting exchanges?---Of course.

45 And also entitled Queensland to charge their interstate counterparts a fee if they were betting on Queensland races?---Yes.

TAB South Australia - - -?---Yes.

- - - TAB Victoria etcetera?---Well – yeah. South Australia was owned by the same  
- - -

5

But that idea - - -?--- - - - owned by Tatts – yeah. Yeah.

And you're aware, are you, that in the second half of 2008 Mr Bentley, on behalf of  
Queensland Racing, was urging the Queensland Government to introduce race fields  
legislation?---Yes.

10

Which would have the affect that I've already - - -?---Yeah.

- - - suggested to you?---Yeah.

15

Now, in volume 3 of the bundle at tab 80 is what we call the Grace advice. You've  
seen that document before?---I have.

Did you receive it shortly after the 18<sup>th</sup> of November 2008?---I must have. I – I don't  
know when I exactly received it, but it was on the agenda for the 4<sup>th</sup> of December so  
I – I received it shortly thereafter.

20

So certainly between 18 November and 4 December?---Mmm.

25 Did you read it?---Of course I did.

Did you understand it?---It was – it all came down to the definition of a couple of  
words and – and words that weren't in the – in the – in the Product and Program  
Agreement. Yes. I – it was tough going. It was a long, detailed letter of advice but  
yes, I understood it at the end.

30

Did you agree with it?---Look, I don't put myself on a pedestal as being a – you  
know, the most intelligent person. I thought it had legs, you know. It had merit, but  
I took the view that it was – it was going to be fought very – very hard, and I  
assumed it'd go to the High Court because it was worth so much amount of money  
on – on – on a very – on a very – couple of words, very fine points. So – yeah. You  
know, I – it certainly had legs.

35

Well, let's just deal with a few things that you've said. You said you thought it had  
legs?---Well, I – I think it had merit, put it that way.

40

That must have come as a surprise to you, given your understanding up until that  
point of time of Tatts' entitlement to deduct?---Yeah. Hadn't even considered it. It  
did.

45

Did you then discuss it with other directors of either Product Co or Queensland Racing?---Well, it came up at board level on, in particular, Product Co. Yes. Yes. I did. I didn't discuss it outside. I just discussed it at – at board level.

5 Well, let's deal with chunks of time: between 18 November and 4 December 2008?---No. I don't think so. No.

This advice came as a surprise to you?---Yes.

10 You didn't get on the phone and ring people and say, "Gee whiz, what Mr Grace is saying is not what we thought it is the right situation?---No. I didn't. I left it at board level.

All right. The other thing you said just before was that you thought it would go to  
15 the High Court?---Oh, yeah. I did.

Can I just suggest what you're saying is that you didn't think that Tatts would agree with Mr Grace's construction?---It was a very narrowed definition of a couple of words. Yes.

20 And - - -?---And it meant so much money, so they would test it.

So you thought it would be vigorously litigated?---Oh, yep. Still might be.

25 Was that a matter that you considered before the 4<sup>th</sup> of December 2008?---No. I didn't. No. I – no. I didn't at that stage.

So I'm just trying to get clear in – clear what your position was when you turned up to the meeting on the 4<sup>th</sup> of December. You've read Mr Grace's advice; you thought  
30 it had some legs?---Mmm.

You hadn't thought about it being litigated all the way to the High Court, or you had?---I knew it'd be – I knew it would be opposed - - -

35 Yes?--- - - - by Tatts.

Yes. And you knew that would be an expensive process?---Yep.

40 So you turned up to the meeting on 4<sup>th</sup> of December?---Yes.

Mr Lette wasn't there?---No. Look - - -

I can show you the minutes, if you like?---I – yeah. Well, I accept – sorry. I accept  
45 what you say, that he wasn't there.



Do you have any – now any independent recollection of the meeting of the 4<sup>th</sup> of December 2008?---No. Look, I – you know, the – the meetings ran into one another – long time ago.

5 For the purpose of giving evidence today, have you read the minutes of that meeting?---I did last night.

And the minutes of the meetings in March and June?---Yes. I did. Yes.

10 And you've re-read Mr Grace's advice?---Yes. I have.

For the meeting at the 4<sup>th</sup> of December, you're aware that Mr Lambert also was not there?---Yes.

15 Now, I can show you the minutes if you like, but I respectfully suggest they're unlikely to provoke any recollection. Do you recall Grace's advice being discussed?---Yes.

20 Okay. As best you can recall, can you recount the discussion?---No. I would've in my affidavit if I could've, so I – no. I can't recall what was actually said and by whom, but it was – it was a major issue.

How long did the discussion take?---Sorry. Sorry, Mr Wilson. I couldn't - - -

25 Can you distinguish between it taking a minute and half an hour?---Oh look, it would've been 15, 20 minutes. But I'm not – I'm not going to get hung if I'm wrong on that, because there's no – no evidence of it.

30 I'm not going to - - -?---No. All right.

- - - criticise you, but it was more than a passing - - -?---It was more than a passing comment.

35 And did more than one person have input into the discussion?---Look, I'm – I would assume so but again, I can't recall who actually said what and about what.

Well, do you recall that at the meeting was Mr Hanmer?---He was chairman. He was there.

40 You recall him being there?---Yes.

Ms Watson?---Yeah. She was there.

45 Mr Ludwig?---Yeah – oh, yeah. He was there. I think – I think the minutes reflected only Michael and – Michael and Bob Lette weren't there.

And Mr Godber?---He was a – he was a substitute – a proxy for Lette.

5 Yes. Well, dealing with them in order, do you recall Mr Hanmer expressing or stating anything at that meeting?---Look, I'm -- look -- no. I -- I really can't recall specifically what was said and by whom. It was an important piece of advice that -- that meant an awful lot of money, possibly, to Product Co and consequently dribble down to the -- to the three codes.

Did the -- Mr Hanmer say anything to the effect of, "This advice is rubbish. We don't need to consider it any further"?---Oh look, I - - -

10 Well, he also -- I'm sorry?---Look, I'm sorry. I -- I -- whether he said it that meeting -- I know he said it at -- at a subsequent meeting, that he didn't disagree -- that he didn't agree with it. But I -- as to that meeting -- because the -- the minutes were very, very brief as -- as to that particular issue, and it was just merely noted.

15 That's why I'm asking for -- sorry. Go on?---Well, from my recollection of the minute, it just says the letter was noted and that, you know, no further -- no -- no further action at that stage was proposed.

20 But you said there was some discussion about it?---Yeah. Yep. Yep.

It wasn't simply a matter of the letter being produced - - -?---No, no.

- - - noted and move on to something else?---No. No.

25 Did you say anything about it?---Look -- look, I don't know. I don't know. I know it was an important issue and I may have said something. I may not have said something. Maybe Tony did all the talking. I can't be sure of that. I'm sorry.

30 Well, did you say, "I agree with Mr Grace"?---Look, I agree with Mr Grace -- look, I'm a lawyer of, you know, 30-odd years. I couldn't specifically say that he was right or he's wrong. It was an argument and it wasn't black or white, you know. It was a question of whether a judge who eventually decides -- what I think is not -- not really relevant. It's what the judge thinks, on hearing the matter, whether or not they're right or wrong.

35 Well, did you think that that should be done? It should be tested before a judge?---I'm on the record of -- of -- of that.

40 At that meeting, I'm talking about. We'll come [indistinct] shortly?---No. Not -- not -- not at that stage. No. You know, I was just feeling my way and seeing -- seeing what -- what other people thought about the issue.

45 Well, that's what I'm asking you. Did you -- what did Ms Watson say about it?---Kerry I don't think understood it, to be honest, and didn't understand the advice, so she didn't say anything very much at -- at the meetings at all, though, in Product Co meetings. But on this particular issue, I don't think she really understood it.

What about Mr Godber?---No. I can't – can't recall. I remember him saying something, but I can't remember what he said.

5 What about Mr Ludwig?---Bill never said much at any meeting.

So it was tabled, noted?---It was tabled, noted and – and you know, obviously it wasn't off the – it wasn't off the table. That's for sure. While it was tabled it was still there and, you know, it was quite obvious that issues arose from it.

10 Yes. What was your relationship like with Mr Hanmer at that time? I'm talking about the 4<sup>th</sup> of December '08?---Oh, yeah. It was good.

Yes. Did you discuss with him Mr Grace's advice outside of the meeting?---I'm not sure. I'm sorry. I'm not sure.

15 Well, it was an important issue?--- It was an important issue. That's right.

Would've been a topic of conversation between you, surely?--- I'm not sure.

20 All right. Now, could I ask you to turn to tab 111 in that book.

COMMISSIONER WHITE: Might be as well if you let Mr McDonnell do that because the arrangement is not - - -?--- Yeah, that's a good idea. It's a bit all over the shop.

25 - - - is not orderly.

MR WATSON: Just watch that last year on that. Now, this is the minutes of the next Product Co meeting, I suggest, on the 5<sup>th</sup> of March 2009?--- I see.

30 And you were there?--- I'm on the record as being there, so yes.

35 Do you have any independent recollection of that meeting?--- Well, only from what you read in the minutes. Look, I know at one of the meetings that David Grace attended, I asked him specifically a question that if we – and it's in my affidavit. And I'm not sure if it was this one – I deposed to it in my affidavit that it was in the June one. It could've been in the March one. But I specifically said to – you know, we were getting pushback about the advice and about investigating. And I said to Grace – I said look, aren't we going to be in breach of our duties as directors if we  
40 don't follow this through and get legal advice? Or words to that effect.

45 But you already had legal advice?--- Well, he's a solicitor. I think we should've taken it further to get QCs advice. And I know Hanmer seemed to think that he – he suggested David Jackson. I was suggesting – I didn't – I was suggesting that David Jackson of the High Court fame, he must be about 72 now because he just does High Court appeal. He's a Queenslander but I think he lives in Sydney or Melbourne now.

And that was a fellow – I know there’s a David Jackson QC here in Queensland, I think.

5 Used to be?--- Yeah, okay. Well, yeah.

COMMISSIONER WHITE: Is it – I think that doesn’t mean he’s gone?--- Yeah. So you know where I’m coming from.

10 He’s a judge?--- Sorry?

It suggests that he’s - - -

MR WILSON: He’s moved to a higher plane?--- Oh, okay. Sorry.

15 COMMISSIONER WHITE: Yes, he’s still alive, Mr Wilson.

WITNESS: I’m not up with the – I’m not up with the movements of judges or appointments of judges, sorry.

20 MR WILSON: But Mr Grace was at both the March and the June meetings?--- Yes, that’s right.

25 You can’t recall which meeting you asked him that question at?--- Look, I’m not certain. I know I did ask him – ask that.

I don’t think much turns on that?--- No, it doesn’t. No. But I asked him and he said yes, we had to investigate. And we still get – stopped getting – kept getting pushback. I just didn’t understand it. It was – it was wrong.

30 When you’re talking about getting pushback, you mean from Mr Hanmer?--- Yes, in particular.

35 And anyone else?--- Well, Bob Lette said – you know, he had advice. And he didn’t agree with it either. And Kerry I don’t think understand. Bill didn’t stay anything much at the meeting, so – that’s Bill Ludwig. So – you know, it was Michael and I saying hey, you’re going to have to do something. You can’t – you can’t put this aside and put it under the counter. It’s got to be acted upon. It’s so important to the racing industry.

40 I’m just trying to understand why it was necessary to get extra legal advice. You already had legal advice?--- Oh, come on. You’re not serious about that. I’m talking about getting QCs advice.

45 Yes?--- You know, David is a very well regarded solicitor but he’s not QC. He’s not silk. So it might’ve helped had we had further advice to confirm it. What’s the difficulty – what’s silly about that?

Or that you disagree with it?--- Well, if he disagreed we would've been back at place one saying hell, where do we go from here? But, you know, at that stage it didn't arise so nothing I – we could do about it.

5 In your – could I just ask you to turn to tab 118. And we will come back to those earlier minutes. But I just wanted to take you to the foot of the first page of 118. And you'll see there that there's a correction made in the minutes on 4 June of those earlier of the meeting of the 5<sup>th</sup> of March; do you see that?--- Yes, that's right.

10 Did you, in fact, say at the meeting on the 5<sup>th</sup> of March that you fundamentally agreed with the advice provided by Mr Grace?--- No. That – that – that's why it's corrected.

15 Did you say at the meeting on the 5<sup>th</sup> of March that action should be taken against UNiTAB?--- Look, not certain about that but it could mean something. I was a bit gung ho.

Sorry, you - - -?--- I – I'm a bit gung ho.

20 Yes?--- So yes, I may have said that. That's quite possible.

Well, did you move a motion at the 5<sup>th</sup> of March meeting that action be taken against UNiTAB?--- No, I – no. You've seen the minutes, you know I haven't.

25 Why not?--- Look, we just had to go through the motions of having it resolved at board level before we did that. And look, probably I should've – I could've, but I didn't.

30 Well, I certainly understand the advice is raised and tabled at the meeting on the 4<sup>th</sup> of December; correct?--- Mmhmm.

We then come to the 5<sup>th</sup> of March?--- That's agreed.

And Mr Grace is there?--- That's correct.

35 Opportunity to ask him questions?--- Yep, we did.

You were of the view that he was correct?--- No, no. I hadn't said that. I hadn't said that.

40 No, you thought his argument had legs?--- Yes, I did.

And - - -?--- It was an argument.

45 And you thought that action should be taken against UNiTAB?--- That's gung ho, as I said. And we would never have taken action against Tatts until we got – you know, we got further senior counsel to those.

Well, my question is why didn't you raise it at that meeting that you should do  
- - -?--- Look - - -

- - - either of those two things?--- Look - - -

5

Let me finish. Let me finish. That you should do either of those two things: get  
senior counsel's advice or bring proceedings against UNiTAB?--- Oh, much  
preferable the first one, and we advocated that. But look, I was wrong. You know,  
maybe we should've stood on our digs at that March meeting and formally moved it.  
10 But your board meetings – we had very little formal resolutions; you know? It was  
generally by consensus that – resolved. And you'll – you know, you've read all the  
board minutes. Very rarely did we have a vote as such.

15 But this is a matter, as I understand you, where there's a disagreement between at  
least Mr Hanmer and you, and Mr Hanmer and Mr Lette, and you and Mr  
Lambert?--- Mmhmm.

Yep?--- Yep. Yep.

20 And there's three other people?--- Yep.

Why not seek to persuade them that you should either seek legal advice or bring  
proceedings?--- Yeah, good question. I should've – I should've - - -

25 I'm asking for your view?--- In hindsight, I should've. But the matter wasn't – you  
know, it wasn't finished at that stage. And if – you know as well as I do, if they – if  
Tatts unlawfully deduct money, we can recover it. So it – you know, while it was an  
issue, it wasn't something that we'd thrown the towel in at all.

30 But criticism could be made that a large sum of money was being lost each month?---  
And I'll – I'd accept that criticism. I'd accept that criticism, and it was.

35 But I'm still trying to understand from you why you didn't raise it at the 5<sup>th</sup> of March  
meeting?--- Look, as I said, the matter hadn't been finalised. We were still  
advocating. There was an issue about getting government advice. I didn't – I didn't  
totally agree with it because I didn't see what advice the government or the Office of  
Racing could throw onto it. But you know, they were looking at maybe an issue of,  
you know, speeches in parliament, first reading speeches, some negotiations leading  
up to it. You know, something like that that may have thrown some light on it. So I  
40 was prepared to wait till we got those responses and – you know, before we did  
anything.

45 You, in fact, joined in the meeting agreeing to – writing to the Office of Racing or  
whatever it was called in those days seeking appointment with the Government  
[indistinct] ?--- Yes. Yes. Yes, I would've. Yes, I would've. Yes, I accept that.

Do you recall Mr Lambert at the meeting expressing any contrary views?--- To what?

5 To - - -?--- Writing?

To simply sitting back and waiting. That something should be done by way of getting legal advice or suing Tatts?--- Michael's here, you'll have to ask him that. But - - -

10 I'm asking you?--- I can't – no, I – no, we didn't go straight away to the legal advice issue. We were waiting for the – a response from government or Office of Racing.

Well, in the minutes of the meeting - - -?--- Which meeting is this?

15 The 5<sup>th</sup> of March meeting, tab 111, which I think you've got - - -?--- Is it in my affidavit? It might be easier.

I'm just working from the book, Mr Andrews?--- Okay, yes. March I've got.

20 Go to section 2.1.3. Do you have that? On page 3 of the minutes?--- Yep.

The board noted Mr Grace's advice, presumably again. And there's then an attribution to you and Mr Lambert about something needing to be formally resolved by either Senior Counsel advice or by obtaining advice from government; do you see that?--- Mmhmm.

Did either - - -?--- Yes, that's right.

- - - you or Mr Lambert raise the option of obtaining advice from government?---  
30 The question was was it I or Michael that - - -

You see how in that paragraph, what's attributed to you and Mr Lambert is the advice, if correct, raises fundamental issues that need to be resolved either by (a) or (b), (b) being obtaining advice from government?--- Mmhmm.  
35

What I'm asking you is that – if that was either your or Mr Lambert's suggestion?--- Oh, probably Michael's.

40 You don't – do you have any independent recollection of that discussion?--- I'm quite confident that Michael raise the issue of government – going – approaching the government. So I – no, other than that I don't have any recollection.

45 But you accept, do you, that the option of obtaining advice from government came from probably Mr Andrews, or the way it's written there from either you or Mr Andrews?--- Yeah.

Mr Lambert, sorry?--- Yeah. Yeah, that's correct.

And do you recall any discussion – you just need to go three paragraphs down. “The chairman also stated that the Office of Racing”; you see that?--- Yep. Yes, I do. Sorry.

5 Do you recall Mr Hanmer stating something to that effect? If you don’t, just say so?---Look, to be honest I can’t recall him stating that.

And you’ll see immediately after that, “Mr Godber and Ms Watson concurred with the chairman.”?---Yep.

10

Do you recall what Mr Godber and Ms Watson said?---No.

15 Can I then take you to tab 118, which we’ve looked at briefly, and do you know whether at this meeting there was any further discussion of the Grace advice?---There would have been discussion, because if you have a look at 2.1 we got a response from Kelly from the Office of Racing.

Yes, but that didn’t tell you much, did it?---Didn’t tell us anything.

20 No. Mr Lette was at that meeting? He’s recorded as being there?---Look, my memory doesn’t come down to remembering who attended what meetings. There were numerous meetings, so if the records say that he’s there, he’s there.

25 Could I ask on a slightly different – or a completely different topic: Mr Bentley never attended meetings at Product Co?---Look, there is some – I’ve seen what’s going on. I wasn’t at that meeting in October, okay? So I have no idea: I was overseas, so I was absent. So I don’t know.

30 Well, just from your knowledge from the [indistinct]- - -?---No. I don’t – no, I don’t recall him particularly coming into any meetings, but the meeting in question, I was overseas.

Well, you’ve read documents- - -?---I have.

35 His name has been written in hand?---Yes. Not my writing.

And as you quite rightly say you weren’t there, so you can’t say?---No, I can’t say.

40 But meetings that you did attend: Mr Bentley did not?---No.

COMMISSIONER WHITE: Can I just ask Mr Wilson to clarify while we’re in the geography issue? Where were the meetings of Product Co held, [indistinct]?---Generally, in the board room at Deagon.

45 And that’s where the meetings for Queensland Racing Limited were held as well?---That’s right, yeah. Look, the chairman was there at the offices on a very regular basis, so he would have been hanging around probably when Product Co



meetings were on, but as to his attendance he might come in at lunchtime or something like that, but, you know, no, they never went that long to even have lunch, I don't think. So no, I can't – honestly, I can't recall him attending any Product Co meeting.

5

All right, thank you, but would there be – after Product Co had met would there be a general sort of meeting with other members of the staff out at Deagon?---We might have coffee or a sandwich or something like that, and then we'd head off to our various offices or whatever we had to do, yeah.

10

All right. Yes, thanks, Mr Andrews. Thank you, Mr Wilson.

MR WILSON: And it was the practice – just to finish that off – it was the practice, wasn't it, that Product Co met about four times a year?---That's right: every quarter.

15

And it met the day before there was a board meeting of Queensland Racing Limited?---Yes.

20

And there was a report at the Queensland Racing Limited meeting- - -?---That's right.

- - - by – usually by Mr Hanmer as chief of Product Co?---He was chairman.

25 And either Mr Bentley left the Queensland Racing Limited meeting when that was discussed, or he offered to?---Yeah, that'd be right.

Now, you mentioned earlier before that Mr Lette had said that he had advice, or he didn't agree with Mr Grace's opinion. Do you recall saying that?---Yes.

30 Do you recall whether he shared that view with the other members of Product Co?---Yeah, it was at board level. He never said who he got it from or anything, he just said that he had spoken to, you know, one of his partners or somebody at his office and he – his advice was that he didn't agree with Grace at times.

35 And did Mr Lette himself express any view?---He accepted the view that his colleague had given him.

So he had considered his – it appeared to you he had considered his colleague's view?---Yeah.

40

And it was reasonable?---Yeah.

45 Right, and when that was raised by Mr Lette was there any discussion about that?---No. We should've in hindsight. We should have asked who and where did he get it from, because we had written advice and people were coming, plucking, you know, verbal advices out of the air and nothing in front of us, and we had five page written advice.

Well- - -?---We should have taken issue, I accept that.

Mr Andrews, at the meeting on the 5<sup>th</sup> June – sorry, the 4th- - -?---4<sup>th</sup> of June.

5 - - - of June, again, did you move that Queen’s Counsel’s advice or Senior Counsel’s advice be obtained?---Mr Wilson, the record clearly indicate that I didn’t.

Why?---We were – my recollection is, I think, that we were going to write again to the Office of Racing to get an appropriate response.

10

You didn’t see that it was significant that a large amount of money was flowing out each month- - -?---I was confident - - -

15

- - - through this time?---Yeah. Look, I was, but I was also confident that if the advice that we would subsequently get would come down in our favour we could recover it from Tatts.

Well, you had advice that Tatts weren’t allowed to do what they were doing from Mr Grace?---Yeah, that was one person. Yeah, that’s right.

20

What did it matter if the Queensland government – what in your mind did it matter if the Queensland government said Tatts aren’t allowed to charge this, or it wasn’t the intent of the agreement that Tatts charged this?---That would have been more ammunition for us. Your question was that if the state government agreed with Grace’s advice it’d be more ammunition, but I still wouldn’t run off to court until I had got Senior Counsel’s advice.

25

Again, I ask why didn’t you agitate for that at either the March or the June meetings?---I was prepared to the await the outcome of the subsequent request to the Queensland government as to the commercial intent of the agreement. I still had not given up on litigation.

30

And if the Queensland government came back and said sorry, we can’t help you?---Well, then we’d better get moving.

35

To do what?---Get counsel advice.

You were a director until 21 December 2009?---That’s correct.

40

And to your knowledge had a response been received from the Queensland government by the time you left?---No, it hadn’t.

Did you do anything to expedite that response?---No, I didn’t.

45

You are aware, aren’t you, that the- - -?---But – excuse me, sorry. I had no dealings with the government in any shape or form. I never attended a meeting with any of the government ministers. You know, I was the new boy on the block and it was the

chairman and the deputy chairman and Ludwig that had those meetings, and I assumed that they did what was right by the industry. They had director's duties.

As did you?---That's right, yes.

5

When you say you were the new boy on the block, you had been there since 2005?---Yeah, but I was – Bill Ludwig and I were the latest members of the board.

10 And you were aware that you were entitled to raise – or to move a motion at a meeting that Senior Counsel's advice be obtained?---Yes, I am.

And can I suggest that you didn't do that because you had doubts, as did the others, as to whether Grace's advice was correct?---That's nonsense, with respect.

15 And that Tatts were entitled to deduct- - -?---That's nonsense, with respect.

You are aware, aren't you, that- - -?---Excuse me. You know, look - - -

You've answered my question, I think.

20

COMMISSIONER WHITE: I think if Mr Andrews needs to supplement it he can do that, Mr Wilson. This is not real cross-examination?---You may recall that as soon as the government changed I spoke to – or very soon thereafter – I spoke to Kevin Dixon about the advice. I hadn't forgotten about it.

25

MR WILSON: And you were aware nothing had still been done?---That's not quite right. I'm sure they were talking to Tatts, and I'm hopeful that there was – if you read today's paper, there was something – whether it's correct, I don't know – but it could be a great result for the racing industry in Queensland if that's true – if that's correct.

30

If you believe what's in the Courier-Mail?

35 COMMISSIONER WHITE: Fighting words, Mr Wilson?---Yeah, if you believe what's in any – not only the Courier-Mail, but all the papers.

MR WILSON: You are also aware – I'm sorry, I'll go back a step – the entitlement of Tatts to make the deduction from the Product and Program Agreement itself derived from the New South Wales legislation?---Yes, I believe that's correct.

40

And you are aware that that legislation was under challenge?---That's correct: by Betfair.

Principally at the suit of Betfair?---Yes, that's correct.

45

And that that litigation wasn't concluded until March 2012?---That's correct, yep.

Thank you.

COMMISSIONER WHITE: Thanks, Mr Wilson. Mr Pincus, any questions that you want to ask Mr Andrews?

5

MR PINCUS: No, Commissioner. I don't propose to ask any questions.

COMMISSIONER WHITE: All right, thank you. Thanks, Mr Andrews, you're free to go?---Thank you, Commissioner.

10

**WITNESS WILLIAM ANDREWS EXCUSED**

**[10.45 am]**

15 MR PINCUS: Commissioner, may we just clarify in the usual course that – just in case - - -

COMMISSIONER WHITE: Mr Andrews, counsel has reminded me that to date I've not been entirely releasing witnesses. It's unlikely that you would be required to come back, but because it's an ongoing inquiry and something might arise through other witnesses or further statements that we get that we might need to ask you to return.

20

MR ANDREWS: That's fine.

25

COMMISSIONER WHITE: Will you be contactable in Brisbane over the next couple of weeks?

MR ANDREWS: Yeah. I'm not going anywhere, Commissioner.

30

COMMISSIONER WHITE: All right, thank you.

MR ANDREWS: Thank you.

35 COMMISSIONER WHITE: On those terms then you're free to go.

MR PINCUS: Thank you, Commissioner.

COMMISSIONER WHITE: Thanks, Mr Pincus.

40

MR PINCUS: The next witness, Commissioner, is Mr Lambert.

**MICHAEL LAMBERT, AFFIRMED**

**[10.46 am]**

45

**EXAMINATION BY MR PINCUS**

Mr Lambert, you've given two statements to the Commission having received a notice requiring you to do so?---I have.

5 First sworn 24 July and the supplementary one sworn 27 August?---That's correct.

And you were also required by notice to provide any documents relevant to matters set out in the schedule for the notice, and you confirmed by email that you don't have any documents in your possession?---That is correct.

10 Thank you. I have no further questions.

COMMISSIONER WHITE: Yes, thank you. Mr Wilson?

15 **EXAMINATION BY MR WILSON** **[10.47 am]**

MR WILSON: Thank you, Commissioner. Mr Lambert, if you want to see your statement, please tell me?--- Mmhmm.

20 You say in it that you were the lead advisor to the government when what was then the TAB was privatised in 1999?--- That's correct.

25 What did that involve?--- I was in an investment bank called ABN AMRO, and I ran a team that advised the government on the restructure of TABQ, a repute about 18 months. And then we arranged to take TABQ to the marketplace and we advised the government on the float of TABQ.

30 And did part of your work involve the Product and Program Agreement?--- We had some involvement with that. It was largely driven by TABQ with its lawyers. But we, on a commercial basis, had some involvement. Yes.

Did you – are you familiar with that agreement?--- Broadly.

35 I might just get you to identify – it's in volume 1 at tab 175?--- Yes.

40 And you became familiar with that later – I should say more familiar with that later when you became director of Product Co?--- Look, we – I hadn't gone back and reviewed it again. I was broadly aware of its structure before, but I didn't go back and review it. We had discussions. When Mr Grace's opinion arrived, I did check it against – his advice against the document at that stage.

45 And you're aware that the agreement obliges Product Co to provide certain information to TAB Queensland or what became UNiTAB and Tatts?--- That's correct.

And to provide it exclusively - - -?--- That's correct.

- - - to it?--- Mmm.

You're aware that the agreement permits Tatts, if I can call it that, to also provide that information to specify people in the agreement?--- I believe that's correct.

5

With Tatts' consent?--- Yes.

And you're aware that if Product Co derives a fee from the provision of that information to others, that is deducted off of the fee that Tatts pays?--- I think I had some awareness of that. I wasn't certain about that but I thought that was the case, yes.

10

Do you want to have a look at clause - - -?--- No.

15 Part 7 of the agreement?--- No, I think that's the case, yeah.

And I'm putting it to you admittedly quite generally?--- Yeah.

You're aware that there is also a provision in the agreement that if Tatts had to pay a third party, it's called a third party charge, it was also entitled to make a deduction under the agreement?--- That is correct.

20

Now, if we then move forward to 2008. There was then – sorry, before I do that I should ask you one question. You're aware that the Product and Program Agreement was drafted bearing in mind what's been described as a or the gentleman's agreement?--- Yes.

25

That is, the exchange of information between states without charge?--- That is correct.

30

Can you say whether, at the time the Product and Program Agreement was drafted, that consideration was given to what would occur if the gentleman's agreement broke down?--- I believe that was considered, and I believe the basis on why there was a statement in the agreement that if the TAB had to pay fees to a third party, there could be an offset. That was the broad intention.

35

So as early as 1999 there - - -?--- Yes.

- - - was talk about the gentleman's agreement surviving?--- That's right.

40

COMMISSIONER WHITE: Can I just intervene here to ask – 1996, I think I'm correct. That was the first internet wagering with Centrebet? It was - in other words, it was in place when the privatisation of TABQ occurred?--- Yes, Centrebet was in place. The concern was more particularly that the – each of the states would impose fees on their – for their product in regard to product and supply to other states, which is a – was really directed at the TABs, not directed at the corporates at that stage.

45

I see. All right, thank you?--- Yeah.

MR WILSON: Now, you were a director of both Queensland Racing and Product Co for the 2007, '8 and '9 calendar years?--- That's correct.

5

You say in your statement – again, if you want to look at it, please tell me – that Mr Bentley was precluded from participation in Product Co matters, owing to the fact that he was a director of what I call Tatts?--- He decided not to be involved and Mr Hanmer was appointed as the chair, that is correct.

10

To your knowledge, did Mr Bentley ever attend any meetings of Product Co?--- I believe he had – did attend.

When?--- I'm not certain, I think he attended at least one meeting in 2009.

15

Is that because you've read some documents?--- No, I had a recollection of him attending for a particular item.

Which item was that?--- I thought it was a discussion about the racing – race fields legislation.

20

Do you recall the date?--- No.

In 2009, you say?--- I believe it was in 2009, yes.

25

Now, if we can go back to 2008?--- Yep.

In early to mid year 2008, New South Wales was looking at enacting or had enacted its race fields legislation?--- That is correct.

30

And there was concern at either Product Co or QRL or perhaps both as to the effect that would have on the Product and Program Agreement and the relationship at Tatts?--- There was concern about it in respect of most of the racing industry in most of the states. All the jurisdictions – I was on the board of RISA at that time so I met with all the racing organisations control bodies, and we all had concerns. And I spent some time speaking to Peter V'landys, the chief executive of Racing New South Wales, about my concern that his actions would break down the gentleman's agreement. And I sought to have him modify the approach to avoid a flow through to other jurisdictions.

35

40

And what would be the flow through to other jurisdictions?--- The concern I had was that if there was a charge imposed by, say, Racing New South Wales on the supply of their information to Tatts then Tatts may be able to deduct that from their fee to Queensland.

45

And you, in fact, prepared a memorandum about the matter. Can I ask you to look at tab 38, please?--- Tab 38. I'm still looking.

It's towards the front of volume 3?--- Is it? Okay. I haven't got volume 3.

COMMISSIONER WHITE: It's necessary to have a helper, Mr Lambert, with these  
- - -?--- Yeah, no. I agree. Yeah.

5

MR WILSON: Do you have that?--- Yes, I remember that.

Just familiarise yourself with it. It's three pages long and then there's some  
reference to the legislation?--- Yes.

10

That's a document that you prepared?--- I did.

Now, if you go to the second page of the document, it's in fact numbered in the  
bottom right hand corner?--- Sorry, which page is that?

15

Page 2?--- Page - - -

Bottom right-hand corner?--- Yes.

20

You there refer in the second paragraph to the purpose of the legislation; do you see  
that?--- Yes.

And there's reference there to the fee being levied against Betfair and the Northern  
Territory based corporate bookmakers?--- Yep.

25

And you refer there to the interpretation that the minister has placed on it?--- Yep.

But you'd make a point that it appears to have a wider impact?--- That's correct.

30

What was that wider impact?--- It was being applied not only to the corporate  
bookmakers, which were the free riders, but it's been applied to all the Tatts, which  
had already been paying for their product and program.

Okay. And then – sorry, had you finished?--- Yes.

35

In your paper, you then talk about first round and second round effects?--- Yes.

If we go to the first round effects, you set out there four dot points?--- Yeah.

40

Could I refer you to the fourth dot point?--- Yes.

It was your view at that time, based on your researches and enquiries, that in  
Queensland UNiTAB would deduct the amount that it had to pay in New South  
Wales?--- It was my interpretation at that point in time. It no longer is my  
interpretation.

45

But at that point in time you had the Product and Program Agreement?--- Yes.



And what other enquiries had you made at that point in time?--- I had simply read the Product and Program Agreement at that point in time.

5 Did you make any enquiries of Mr V'landys?--- I spoke with Mr V'landys a number of times to understand the intention behind the legislation. And I formed a view that he wasn't intending or seeking to have the cost passed forward, but he was trying to obtain additional revenue for his jurisdiction.

10 And then if I could take you to the next page, under the heading "Assessment", second paragraph; do you see that?--- Yes.

You there refer to the financial impact. You say, "Marginally, Queensland winners with Victoria and New South Wales."?--- Yes.

15 Is that if only the New South Wales legislation is enforced or if Queensland brings in race field legislation as well?--- No, that was on the basis that Queensland brought in legislation. And my comment there was only in respect to the corporate bookmakers. It wasn't in respect to the impact it would have if, in fact, Racing New South Wales charged Tatts. And in fact Queensland would be a loser, and was a loser once New  
20 South Wales passed the fees through to Tatts.

Do you see you make that point, "There will be a subsidiary net benefit toward jurisdictions, to the extent that the 1.6 per cent fee is paid by wagering operators who at present pay no fee."?--- Yes.

25 You're referring there to the corporate bookmakers?--- Indeed, I am.

And if race field legislation is brought in in Queensland, that entitles the Queensland control body not only to charge the corporate bookmakers but also interstate Tatts?---  
30 No.

Why not?--- I believe that wasn't the intention. The intention was, as I believe the Queensland legislation, was to charge corporate bookmakers.

35 Only corporate bookmakers?--- Yes.

And not interstate?--- That's right.

40 Tatts?--- Yes.

And is that the basis on which your opinion has changed?---No.

45 Because if Queensland can charge interstate operators – who do you keep looking at at the back?---No one.

If Queensland can charge interstate equivalents of Tatts for fees, then Queensland could derive more income than Tatts deducts?---The fundamental problem was that

there was only one state in which the Product and Program Agreement in place didn't allow for an offset, and that was New South Wales.

5 Yes?---In every other state there was an offset provision in their Product and Program Agreement, so only New South Wales gained from applying the Product and Program Agreement to the Tatts – to the various [indistinct] agency boards. It didn't – didn't – wasn't a benefit to any other jurisdiction.

10 If you go then – you prepared that memo, I think, on the 1<sup>st</sup> of July - - -

COMMISSIONER WHITE: 2008.

MR WILSON: - - - 2008?---Did I? Okay.

15 Yes. Go to tab 39 - - -?---39.

- - - which hopefully is the next document?---Yes.

20 And this is the meeting of QRLs board on the 4<sup>th</sup> of July, a few days later?---Yep.

And at page 5 of those minutes, you relayed to the board your understanding of the intent of the New South Wales legislation?---Yes.

25 Was there discussion about that? You'll see the last line on the page?---Yeah. There was discussion. The board, I think, as one were concerned and alarmed that the New South Wales legislation would have a negative impact upon the revenue of Queensland.

30 Yes?---And they asked me, and I did speak to Mr V'Landys further about that matter.

If you then go to tab 47?---47. Yep.

35 And again, take your time to have a look at it, but this is a board paper that you co-authored with Mr Tuttle?---I – I may have. I – I can't recall that.

Well, look at the last page?---Oh, yes. You're right.

40 And in fact, it's got "Originator: M. Lambert". What's your understanding of what that means – on the bottom of each page?---I think it meant I – I was the director who was involved with it, but I think Mr Tuttle and – and various other people also were very much involved in writing the document.

45 Yes. So this was a collaborative program?---It was.

And you have prepared this for the purpose of the Australian Racing Board meeting on the 14<sup>th</sup> of August?---Yes.

5 And on page 2 of that document in the last paragraph, you refer there to the terms of the Product and Program Agreement, and in the last four lines: “In the event that any other jurisdiction seeks to impose a fee on their racing product then UNiTAB will net off that fee against the fee payable to Product Co and hence QRL”?---That was my understanding.

At that time?---At that time.

10 Yes?---Yes.

And on page 6 of that document, you’ll see there that you have referred to some data that New South – Racing New South Wales has access to and to their assessment. This is as a result of your inquiries of Mr V’Landys, is it?---No. I don’t believe so. I – I – we didn’t discuss data. I believe this would’ve been from Queensland Racing’s own solicitors.

15 I’m just referring to immediately above the dot points. New South Wales – “Racing New South Wales has access to data that has enabled to make some broad assessments. Their assessment is as follows”?---Oh, okay. It might have been. Sorry. Yes. That – that may have been the case. Yeah.

Is that as a result of your inquiries or - - -?---I think – I think that was raised with Peter V’Landys. Yes. Yeah.

25 You’ll see in the first dot point New South Wales, Victoria and Queensland are large winners, Victoria and Queensland because they are net exporters?---Mmm.

Now, is that even if Tatts deducts the fee it pays to New South Wales?---No.

30 Where does it says this in the document?---I don’t know, but it – it doesn’t. It relates to – it relates to the discussion about corporate bookmaking.

35 But you talk on the second page, as I’ve already taken you to, to Tatts deducting or setting off a fee?---Look – sorry. The – the – the context here that was – at this point at time racing field legislation was being discussed at the Australian Racing Board, and every attempt was being made to achieve a consistent national approach involving all jurisdictions and preserving the gentlemen’s agreement. In that context, the assumption was it was only relating to corporate bookmaking.

40 If you then go to tab 51, this letter is not written to you but it refers to you?---Yes.

You continued to have discussions with New South Wales Racing after that memorandum that I’ve just taken you to. I’ll just draw your attention to the second paragraph?---Yes.

45 That’s so, isn’t it?---Yes. Well, there’s two issues here. One is the issue of the gentlemen’s agreement and the second issue is the issue of RISA. And RISA

provided the actual publication of data, and there – there’s a separate and distinct issue from use of information for wagering purposes.

5 And RISA provided it in a certain format?---Yeah. And – and charged a fee. It wasn’t a large fee.

Yes?---Yeah.

10 But the entitlement to use it for wagering purposes was the thrust of the Product and Program Agreement?---That’s correct. RISA didn’t authorise that to occur. They’ve simply provided publication. It was the actual Product and Program Agreement that gave authority to use it for wagering.

15 Yes. Now, could I then take you to tab two – sorry. You said earlier that – it’s tab 26 – sorry. Tab 58, fired by tab 269. You mentioned earlier that you recollected Mr Bentley attending a meeting at Race Product Co in 2009. This is a minute or a draft minute of a meeting on 13 October 2008. You see that?---Yes.

20 And it records you as having been present by teleconference?---Yes.

25 Do you recall Mr Bentley being present at that meeting?---I recall Mr Bentley being at at least one, if not more, meetings for particular topics at Product Co, and the meetings were about race fields legislation and I suspect that was one of the meetings.

Well, this in 2008 - - -?---Yeah.

30 - - - not 2009?---Yeah. That’s true. It’s – but it’s a few years ago. But yes, I do – and to my mind there was no conflict for Mr Bentley being in attendance at a Product Co meeting [indistinct] to discuss race fields legislation. There was no conflict in my view.

35 You’re conscious that Mr Bentley had a conflict?---He had a conflict in regard to the interaction between Product Co and Tatts. He doesn’t have – necessarily have a conflict in regard to race fields legislation.

So in your view, if he did attend that meeting it was appropriate?---Yes.

40 I suggest to you that he didn’t, in fact, attend that meeting?---I think he did. Certainly he attended at least one meeting involving race fields legislation.

Your recollection earlier was that was in 2009?---Oh, I may be wrong there. I may be wrong, but he certainly attended at least one meeting, to my recollection.

45 Were copies of these minutes circulated to you?---Yes.

Is the document at tab 58 your document or a copy of your document?---No.

Just turn over – the reason I ask that – if you turn over to the third page?---No. No. It's not my writing.

5 Not your writing?---I retained no physical documents at all.

And you'll give the same answer for tab 269, presumably. That's not your document?---No.

10 Thank you. If I could ask you then to go to tab 67. Now, I appreciate, Mr Lambert, that you're not the author of or the recipient of this letter. Were you aware in early November 2008 that an attempt was being made by Mr Grace to secure agreement from Tatts that it would not seek to deduct any fees that Product Co or QRL received under the Queensland race field legislation under clause 7.5(c) of the agreement?---No. I was not.

15 Did you – or were you aware that there was that possibility?---No.

20 Could I ask you then to turn to tab 68 and again, you weren't the recipient or the sender of this email, but you – are you aware that there were discussions in November 2008 about the importance of Queensland getting its race field legislation enacted?---No. I wasn't aware of this correspondence with - - -

25 No. About that topic?---I was aware that we were discussing race fields legislation, but you're pointing to me – to an email from Dick McIlwain.

Yes?---I wasn't aware of that – that correspondence. No.

I was asking you whether you were aware of the topic?---The topic, yes.

30 And you'll see in the second paragraph there's reference there to, "I encourage them to get the legislation approved" - - -?---Yes.

- - - "and begin charging"?---Yes.

35 Did you turn your mind at all to the situation that would occur if Queensland Product Co or Queensland Racing charged a fee to corporate bookmakers or others for the supply of Australian race information, whether that was something that either had to be passed on to Tatts or deducted from the Tatts fee?---Oh, no. It – it's quite clear if we charged corporate bookmakers that was revenue to us. There was no deduction  
40 for them.

45 Under what clause of the Product and Program Agreement are you referring there?---I'm not – I don't particularly know, but I know that we had had - I know that there was no implication that such a charge would have a clawback, because it would have no adverse impact upon Tatts at all. In fact, it'd be positive from Tatts' point of view, because it would reduce the competition of corporate bookmakers.

You're aware under the Product and Program Agreement that Product Co is obliged to exclusively supply any information to Tatts?---I know that. Yes.

5 That there's an exception under the agreement for Product Co to supply to a list of people in a schedule to the agreement?---I'm aware of that.

And there's no provision for what occurs if Product Co charges a fee to other people?---But it's quite clear from the email that you've just referred me to from Dick McIlwain that Mr McIlwain, speaking for Tatts, was very supportive of us  
10 passing the legislation that would charge corporate bookmakers and clearly wasn't contemplating a clawback.

Have you heard in the discussions about this topic in 2008, perhaps in 2009, reference to Tatts double-dipping?---I – that – well, when you say Tatts double-  
15 dipping, I don't believe that Tatts was necessarily double-dipping.

“Double-dipping” could mean, wouldn't it, deducting the fee that it pays to New South Wales as well as offsetting the amount that Queensland recovers from people under the race field legislation?---I don't believe that was discussed and I don't  
20 believe that was contemplated.

In your discussions with either New South Wales – sorry?---Sorry.

I'll go back a stage. Did you have any discussions with anyone at Tatts about these  
25 matters?---No.

In your discussion with Mr Kelly at the Office of Racing was there any reference to this concept of double-dipping?---No.

30 In your discussions with your fellow directors at Product Co was there any reference to this concept of double-dipping?---Not – not – not that I'm aware of. No.

Could there have been?---Could there have been double-dipping?

35 No. Could there have been such a discussion?---It's possible.

Was there any discussion by you with Mr V'Landys about that?---I do not believe so.

40 Now, if you then go to tab 70?---70. Oh, there it is. Okay.

You'll see that this is reference to a – sorry. There are the minutes of the meeting of QRL on the 7<sup>th</sup> of November 2008?---Yes, that's correct.

45 And you're there, or recorded as being there?---Yes.

And on page 5 of the document under the clause 4.2 you'll see that Mr Bentley excused himself from the meeting?---Yes.

And then there was a discussion about the – sorry – there was a noting of the update and draft bill and regulations on the Race Information Legislation, and Mr Grace would be engaged to provide advice as required?---Yes.

5 Now, do you recall that discussion?---Broadly.

What was the discussion?---The discussion was the implications of the – I think it was NSW racecourse legislation and what impact it could have in regard to the Queensland revenue for the Product and Program Agreement.

10

Were you aware that by that time deductions had already started being made?---I'm – sorry – no, I'm not aware at that stage, no.

15 Certainly from the memoranda that I've showed you, you expected that that would occur?---I expected that there was a probability of that occurring, yes.

20 So if you had been told that Tatts were deducting the fees that they were paying New South Wales under the Product and Program Agreement that wouldn't have come as a great surprise to you?---It wouldn't have come as a surprise, but we also felt at that time that we needed our legal advice on the appropriateness of that.

Yes, and then you obtained – sorry, not you – but advice was obtained from Mr Grace?---That's correct.

25 Tab 80.

30 COMMISSIONER WHITE: Mr Lambert, can you recall who was the instigator of getting some advice from Mr Grace, because Mr Bentley, the chairman, is absent from the discussion?---I believe Mr Tuttle was the person, but he could confirm that. He's in the room.

He'll get his turn in due course?---Okay.

35 MR WILSON: You are familiar with this document?---Yes.

You've read it recently?---Yes.

You received a copy of it shortly after the 18<sup>th</sup> of November 2008?---That's correct.

40 Did you read it?---Yes.

45 Did you agree with it, because it was contrary to what you had believed?---I believed that he made an arguable case. I hadn't – I'm not a lawyer. I hadn't conceived myself the concept and distinction between use of and access, and I felt that that may be valid. I believed that he had raised an issue that we needed to investigate further.

And there was to be a meeting on the 4<sup>th</sup> of December of Product Co?---Yes.

You didn't attend that meeting?---No.

Were the minutes of that meeting sent to you?---I can't recall, but normally they were, so they probably were.

5

Do you recall whether after that – those minutes were sent to you you had a discussion with Mr Hanmer about Mr Grace's advice?---I did.

10 And that discussion became somewhat tense?---Not on my behalf, but certainly from Mr Hanmer's point of view it became very tense.

15 And are you able to recall the issue that caused it to become tense?---Yes. I argued that we should – if we disagreed with the advice we needed to do something. We couldn't simply disagree with the advice and not do something. If we agreed with the advice we obviously had to act. If we disagreed with the advice we had to basically test our views on that advice. We're not lawyers, so I said to Tony that if in fact you disagree with that advice you need to get a senior counsel's advice to test that position. Otherwise, we should proceed with the assumption that the Grace advice is correct.

20

Now, in that conversation, did Mr Hanmer come from the viewpoint that Grace's advice was incorrect, correct, or did he express a view?---He was dogmatic. He said it was absolutely incorrect.

25 Did you come to that conversation with a view that Mr Grace was correct, or- - -?---No. I'm not a lawyer. I said that the argument he's made seems to have some validity. If you disagree with it, we need to test it further.

30 And if he agreed with it?---If we agreed with it, then we should be undertaking action, legal action, to seek to get redress under the Product and Program Agreement.

You went to the meeting on the 5<sup>th</sup> of March 2009?---Yes, that's right. Product and Program - - -

35 Product and Program Agreement?---Yeah. The Product Co - - -

Sorry, Product Co meeting?---Yes, I did.

And Mr Grace was at that meeting?---He was.

40

As was Mr Hanmer?---He was. He was the chair.

Mr Andrews and others?---The representatives of greyhounds and harness and I think Bill Ludwig may have been there.

45

Now, you – did you express any view at that meeting- - -?---Yes.



- - - about the matter?---I did.

5 Did you say that you fundamentally agreed with Mr Grace?---No. I said that he has raised a valid issue and if we disagree with that advice we should test that advice and we should get senior counsel advice, and - - -

10 Was that [indistinct] if we disagree with it we should get senior counsel's advice?---If we agree with it then we should take action to basically put into effect the elimination of the clawback.

Just go to tab 118, briefly. Come back to this in due course, but the bottom of the first page: see that?---Yeah. I wouldn't have expressed it in those terms, but - - -

15 This is- - -?---I know that.

- - - so you understand, this is a correction being made to some earlier minutes.

COMMISSIONER WHITE: If you look at- - -?---Yes. Sorry, you're right.

20 This is delete paragraph- - -?---Yeah, I know. No, I actually agree with the wording on the next page, yes.

MR WILSON: Yes?---Yes, that's right.

25 So, presumably, in some draft minutes, what appears at the bottom of page 1 appeared, and you then sought to have that correct?---That's correct. Myself or Mr Andrews: I'm not certain which, but probably both of us.

30 Do you recall whether at the meeting of the 5<sup>th</sup> of March anybody suggested that action should be taken against UNiTAB?---No. I think the suggestion from both Bill Andrews and myself was that we needed to ensure that we had complete confidence in the legal advice, and if any members present had doubts about that legal advice then the appropriate thing to do was to have senior counsel. Once we had senior counsel and if that confirmed the Grace advice then our view at that stage: action  
35 should be taken against Tatts.

You then go back to tab 111; is the document you had earlier?---Yeah.

40 See that?---Yes.

Could I ask you to turn over – this is a meeting at – which you were present and Mr Grace was present, as well as other people?---Yes.

45 Just turn over to 2.1.3?---Yes.

And you'll see the second paragraph there: this is the corrected version. Do you follow me?---Yes.

The suggestion that one of two things be done, that is, either senior counsel advice or obtaining advice from government, emanated from either you or Mr Andrews?---Yes.

5 And do you recall who?---I think we – probably both who had raised that matter.

So either get senior counsel's advice or seek the advice of government?---No. Initially, we were seeking senior counsel advice.

10 I'm just looking at that- -?---Yeah.

Sorry, had you finished that answer?---No, I haven't.

15 COMMISSIONER WHITE: No, I think Mr Lambert's explaining?---I'm going to continue on, because there's a point here. It was quite clear from my conversations with Mr Hanmer in the board – in the Product Co board meeting, conversations outside that meeting, that he would stop – thwart any attempt to try and get a legal advice, so my second – my fallback was to get advice from the government about the intention.

20 See, the way that- -?---I knew that if I did that they would come back and wouldn't be able to clarify it and would advise us that we should get legal advice, and that was my way – my backdoor way – of getting legal advice.

25 The way it's expressed there is that the either or comes from you or Mr Andrews?---It did.

30 Why not move a resolution at that meeting that- -?---Because we didn't have the numbers. It was very clear that we didn't have the numbers.

And when you say you didn't have the numbers you've just expressed a – what Mr Hanmer said?---The other board members also expressed and refused, apart from Mr Andrews.

35 So Mr Ludwig expressed a view?---Mr Ludwig rarely expressed any view at all, but he sort of nodded his head at one point, so I presumed that was the case.

Ms Watson?---I can't give – I think she in the end went along with the views of the chair.

40 Mr Godber?---I can't recall his view, but once again I'm pretty certain he – I recollect that there was no dissent other than myself and Mr Andrews.

45 But you say you didn't have the numbers?---That's right.

Did you test the numbers?---I raised it, and each – it went around the room and each of them expressed a view, and at that stage – and my conclusion was it was only myself and Bill who had supported the idea of legal advice.

5 Well, did you move a motion?---No. There was no point.

Well, you see, under – and I'm only going from the minutes here, Mr Lambert- - -?---Yeah.

10 - - - you're raising one of two alternative courses?---Yeah, and they decided on the second alternative course, and - - -

But did you ever just put squarely option A: we need to get advice from senior counsel?---That was my view.

15 But did you express that view?---I expressed that view.

20 Did you put it to the vote?---No, we didn't, because, once again, from the voices it was clear that the majority of that group opposed that so I went for my fallback, which was to go the Office of Racing.

25 Did you seek to persuade Ludwig, Watson, and Godber of your position?---I expressed my position at the board meeting. We didn't have one on one dialogue, but I expressed my position at the meeting.

And they disagreed with you?---As I recall, yes.

30 That is, there was a discussion at board level about the way that this should go forward?---There was a view expressed very strongly by the chair which tended to be supported by the other members, that we should not get additional legal advice.

35 But my point is there was a discussion about the merits of that at the meeting?---No. They were - [indistinct] simply said that we don't want to get legal advice. They didn't discuss the merits or demerits of getting legal advice.

And was that because they thought that Mr Grace's advice was wrong?---Well, if they thought it was wrong then they should get additional legal advice.

40 I'm trying to understand from you. You say that you didn't have the numbers- - -?---They took - - -

If you just let me finish?---Okay, sorry.

45 You didn't have the numbers at the meeting?---Yep.

Why these other three people didn't agree with that course?---I don't know. You have to ask them.

But they didn't say anything at the meeting?---Not a great deal other than express a view – an opinion that we shouldn't get - - -

5 Right, and why did they express that opinion?

COMMISSIONER WHITE: How can Mr Lambert say that?

MR WILSON: I'm sorry?---You'd have to ask them that.

10 COMMISSIONER WHITE: If he didn't hear them say anything – that's all right, but in respect - - -

MR WILSON: Did they say anything about it?---They didn't express a reason for it. They had simply agreed with the chair that we should not get a legal advice.

15 And you didn't seek to persuade them to the contrary?---I did, and it was unsuccessful.

20 You are aware that a letter was written to Mr Kelly?---I'm aware. It was a most ridiculous letter.

It followed the minutes of the meeting?--- Yes.

25 And followed the resolution that was passed?--- That's right.

Do you recall whether any attempt was made to have Mr Grace explain to the others at the meeting the merits of obtaining senior counsel's advice?--- It was discussed, and I believe Mr Andrews at one point asked him that. And he agreed that there would be merit in doing that.

30 Do you recall whether there was any attempt, with Mr Grace's assistance, to persuade these other people to take senior counsel's advice?--- He expressed his view at the meeting. So it was an input to their consideration of the issue.

35 And I've already taken you to this but could you go back to 118. This is a meeting which you attended by telephone?--- Yes.

You'll see that on the first page?--- Yes.

40 There's reference on the second page to the response received from Mr Kelly?--- That's right.

45 And there was a further resolution recorded at the bottom – towards the bottom of page 2; you see that?--- Yes.

At that meeting, did you move a motion that, "Well, now we've got the response from government, let's go to get senior counsel's advice"?--- No, because the advice

back from Mr Kelly said fundamentally that the letter that Mr Hanmer had written provided no context, no guidance as to what was being sought and he couldn't respond. It was useless.

5 All right. So why not then move a motion that senior counsel's advice be obtained?--- Because as always at that meeting – at Product Co, they were opposed to it.

10 So did you test the meeting again?--- There were views at the meeting which were – clearly indicated they hadn't changed their view. So this time I asked that we resume our correspondence in a more effective manner with the Office of Racing.

I appreciate it's difficult because you were on the end of the phone?--- Yes.

15 But when you say they hadn't changed their view; who are you referring to there?--- The members of the committee, other than Mr Andrews.

And each of them spoke and expressed - - -?--- I can't recall - - -

20 - - - a view?--- I can't recall that.

25 You also raised this matter with Mr Kelly from the Office of Racing?--- I spoke to Mr Kelly and said that – and he said that he couldn't have responded to the earlier letter because he was provided no guidance. So I said to him how – what's the best way of writing to you? And he said please do not write to me, write to the minister because this is a major issue. It requires minister – a letter to the minister so we can actually then bring in the other jurisdictions. Sorry, the other agencies. He said particularly Treasury, I want Treasury to get involved in this. So please write a letter (a) to the minister and (b) be very particular about what advice and what information  
30 you're seeking from me.

Are you aware that Mr Hanmer wrote to Mr Kelly a second time?--- Yes, I was appalled.

35 You were appalled by that?--- I was appalled by that because he was very clear that Mr Kelly said write to the minister. And he gave very clear reasons why that was the case.

40 Did you raise that at any meeting?--- I did.

Product Co?--- Yes.

45 When?--- Well, I don't know. But I raise it at Product Co meeting and I had – I had also conversations with Mr Haimer on the phone as well.

And what steps did you take to make sure that the – that he wrote to the minister?--- I argued that he should, and he took process over substance and decided not to do so.

Did you write to the minister?--- No, I didn't have authority to do that.

You were a board member?--- I didn't have authority to write to the minister.

5 Did you seek authority?--- I don't – no. No, I didn't. No.

You were aware that no response had been received by – from government by the time you ceased to be a director?--- That's correct.

10 What steps, if any, did you take to expedite that response?--- I spoke to Mr Kelly a number of times.

Yes?--- And explained that the letter had come to him unfortunately. But I hoped that he could respond comprehensively on that letter.

15 And you urged him to hurry up?--- Yes.

Did he give any reason to you as to why he's taking so long?--- No.

20 And through the second half of 2009, did you raise again at any meeting of Product Co the obtaining of Senior Counsel's advice?--- I believe I raised it at the racing – Queensland Racing board meeting.

Yes?--- I think I sent around a note to that effect.

25 And my question was about Product Co?--- No, because Mr Hanmer had said that because the Grace opinion was not directed at Product Co but directed at Queensland Racing that Product Co had no jurisdiction to address it.

30 And Mr Hanmer you say expressed that view?--- He expressed that view.

There's a number of people on the board?--- Mmm.

35 Did you say – attempt to raise at any time with them after the 25<sup>th</sup> of June, "I think we've got to do something about this."?--- I continued to raise it with the chair a number of times. I didn't have personal contact with the other members. I'm based in Sydney. I didn't – I didn't have contact with these people.

40 Did you have their email addresses?--- No.

Are you sure?--- Yes.

No further questions.

45 COMMISSIONER WHITE: Thanks, Mr Wilson. Do you have anything arising from - - -

MR PINCUS: No, Commissioner.

5 COMMISSIONER WHITE: - - - Mr Lambert's – you can't assist? All right then.  
Thank you. Mr Lambert, thank you for attending today. Whilst – just before you go,  
I'm not going to release you entirely. We hope we don't have to call on you again  
but our inquiries are continuing. We're speaking to other witnesses and other  
statements are coming in. It may be necessary to ask you to answer some other  
questions if something arises that we need clarification about. But other than that,  
you are free to go?--- Thank you.

10

**WITNESS STOOD DOWN [11.34 am]**

15 COMMISSIONER WHITE: Thank you.

MR PINCUS: Commissioner, is that a convenient time?

20 COMMISSIONER WHITE: It certainly is, Mr Pincus. All right, thank you. We'll  
take a 15 minute break, Ladies and Gentlemen. Thank you.

**THE COMMISSION ADJOURNED [11.34 am]**

25

**THE COMMISSION RESUMED [11.50 am]**

30 MR PINCUS: Commissioner, the next witness is Mr Tuttle.

30

COMMISSIONER WHITE: Yes. Thank you. If you'd come forward, Mr Tuttle,  
please.

35 **MALCOLM TUTTLE, SWORN [11.51 am]**

**EXAMINATION BY MR PINCUS**

40

MR PINCUS: Mr Tuttle, you've given two statements to the commission in  
response to a notice to do so?---That's correct.

45 And you also received a notice to produce documents and you did produce some  
documents?---That's correct.

Your statements you will find in the front of – or in folder 1, which should be handed to you. If you can just confirm they’re the two, the first sworn on 26 July 2013 and the second on the 10<sup>th</sup> of September?---Yes.

5 Thank you. Commissioner, I understand that there has been correspondence from Mr Murphy asking for examination to occur by Mr MacSporran of Mr Tuttle in relation to some particular issues, so I’ll sit down now while that occurs.

10 COMMISSIONER WHITE: Yes, certainly. Well, you – are you comfortable there or – I might just ask if Mr Wilson will give way - - -

15 MR MacSPORRAN: I should indicate, Commissioner, we have nothing at this stage and if something arises I can renew my application to ask some questions. But at this stage, based on the statements, the content of them and what I know about the evidence that’s coming, we have no issues that arise.

COMMISSIONER WHITE: All right. Thanks, Mr MacSporran.

20 MR MacSPORRAN: So I simply wish to reserve, if necessary - - -

COMMISSIONER WHITE: Whatever rights you think you might have.

25 MR MacSPORRAN: No. Whatever – if something does come out I can renew my application.

COMMISSIONER WHITE: Yes. You can.

MR MacSPORRAN: Yes.

30 COMMISSIONER WHITE: All right. Thank you.

MR PINCUS: Thank you, Commissioner. Could Mr Tuttle now please have volume 2.

35 COMMISSIONER WHITE: No. You’ve arranged for Mr MacSporran to have the documents as well. Is that how it’s - - -

40 MR PINCUS: No. I haven’t – Mr Tuttle’s representatives [indistinct] by Mr Wilson.

COMMISSIONER WHITE: Oh, I’m sorry. Of course you’re right.

MR PINCUS: Mr MacSporran’s here for someone else.

45 MR WILSON: Me again.



COMMISSIONER WHITE: It's not that I want to get rid of you from the bench, Mr – from the bar table, Mr Wilson, at all. I do apologise. Yes.

5 MR PINCUS: Mr Tuttle, could you turn first, please, in that volume to tab 40, which is the very first tab.

COMMISSIONER WHITE: It's just you've got a lot of clients. You've got an awful lot of clients, that's all.

10 MR PINCUS: You don't need to get into the detail of that now; I just wanted to have that open. You were employed at Queensland Thoroughbred Racing board, the control body for thoroughbreds, from 2002 and as the racing services manager from November 2003?---Yes.

15 You were chief operations manager of QRL from 2006, when it became the control body - - -?---Yes.

- - - for thoroughbreds?---Correct.

20 From the code merger in 2010, you were the CEO for RQL, as the control body for all three codes - - -?---Yes. Correct.

- - - until March 2012?---That's correct.

25 You were also on the Australian Racing Board from 2010?---Yes.

And a director of RISA from 2010?---Yes.

30 You were additionally a director of Rockhampton Racing Proprietary Limited from June 2010 till 2012?---Yes.

And Mr Brennan was also a director on that entity?---Correct.

35 Mr Bentley was chairman of the Thoroughbred Racing Board, QRL and RQL during the relevant period?---Yes.

And he was also on the Australian Racing Board with you?---Yes. I think Mr Bentley was there probably before I joined.

40 Yes. But certainly during the time you were on it he was also on it?---Yes.

And it's fair to say that he was a person of substantial influence in the running of Queensland Racing – I call it Queensland Racing when I mean either body?---Both.

45 Yes?---Correct.

He was the boss and, of course, you formally reported to the whole board but he was the dominant influence?---That's correct.

5 At your statement – I'm sorry. I've got to take you back to the previous folder, volume 1. Your first statement, paragraph 24, please?---Yes.

You say – can you just read paragraph 24, please?---Yes. I've read that.

10 The key points being that Mr Bentley had significant involvement in many aspects of the operations of Queensland Racing, and he was in the office on most days dealing directly with managers - - -?---Yes.

15 - - - which would have included you and also, if you look at paragraph 25, Mr Brennan, Ms Reid or Murray and Mr Carter and Mr Snowdon?---Correct.

That would include giving instructions as to what was to be done and how in relation to the operations of Queensland Racing?---Certainly on occasions. Yes.

20 And he would receive information also relevant to Queensland Racing's operations?---Yes.

You would have quite commonly yourself received instructions from him and given the information - - -?---Yes.

25 - - - on a daily basis?---The chairman lived between two areas: North Queensland and South Queensland. And it's my recollection that he would spend four or five periods of time in the north – north of the state, but when he was in South East Queensland and not required to be on other business, he would be in the office most days. So it wasn't consistently four days a week or two days a week or five days a week or three days a week, but I think in my statement I've indicated on most days if  
30 Bob was available to be in the office, he would be in there.

Yep?---Yep.

35 When he was around he was normally there?---Correct. Yep.

And would you be able to put a rough average on the number of days per week over the whole period?---Probably three days a week or something like that.

40 Right. You would consider his views, obviously, on issues relevant to Queensland Racing's operations to be at least important, because of the experience and influence that you've referred to?---The chairman's views?

45 Yes?---Critical.

And as you say at paragraph 24, it goes without saying that he understood the industry well and knew racing and infrastructure well?---He did.

You also knew, in that connection, that he was on the board of Tatts from 2006?---Yes.

5 And that involved its own body of information relevant to racing?---Correct.

Yes. I'm sorry. Can we go back to volume 2 now, please. And we had tab 40 open. I hope it still is?---Tab – yep.

10 Can you just have a look at that. That is a letter sending you an offer of employment, and I understand these are the terms – It's not signed, I'm afraid, but these are the terms of your initial employment by RQL?---Yes.

Could you look, please, at clause 2 and in particular 2.4?---Yes.

15 Have you got that?---Yes.

It says the term is commencing 1 July 2010 and expiring 30 June 2013?---Yes.

20 And over on the next page at 5.1, reiteration of total remuneration value – which I know was a formula – \$300,000 per annum - - -?---Yes.

25 - - - in that point and then over the next page, please, at clause 8 – 8.1(f). One of your obligations, amongst various others, is to observe and comply with all policies, procedures etcetera as amended by RQL from time to time?---Yep. And all reasonable directions given by RQL. Correct.

30 Yes. And at 9.1, there's a prohibition on conflicts of interest, which means that you are required to always act in good faith, in RQLs best interests and to ensure you're not placed in a position where your duties to RQL are in conflict with your personal interests?---Yes.

And that extends to ensuring you're not in a situation where there could be a reasonably perceived conflict between duties and interests?---Yes.

35 There's reference to a policy, you'll see there, on that topic. At 10.1, you have to comply with policies again, and under that – we don't need to go to the detail, but it says they're not strictly terms of your employment contract?---Yes.

40 And then 10.4, it is a term of your employment contract that you comply with the code of conduct as amended from time to time?---Yes.

I should mention 10.3 briefly. You won't withhold any information that may affect RQLs performance of reputation?---Yes.

45 15.1 – I'm sorry. I'm taking you through this just to provide context for what's to come. 15.1 – termination of employment. Have you got that?---Yes. I have.

If, by reason of health or other personal issues, you're unable to continue the fulfilment of your duties under this contract, you may resign by giving six weeks notice?---Yes.

5 And the point of that is, isn't it, that you can only do so where there are health or other personal issues that make you unable to continue the fulfilment of your duties?---Yes.

10 It's not a carte blanche entitlement to resign, because at the end it says otherwise – at the end of 15.1 – you are bound by the period of this contract?---Correct.

Then in 15.3, there's the possibility of RQL ceasing to be the approved control body, in which case RQL will offer you the opportunity to take redundancy?---Yes.

15 But the point is that if you terminate yourself, if you don't give notice by virtue of 15.1, then you lose the pay for the period that you fail to give notice; can you see that?--- Just say that again, please.

20 In 15.1 there's - - -?--- Yes.

- - - a requirement for notice. And then if you look at the second sentence of 15.1, if you don't give notice then RQL gets to take the notice period money back from you. You don't get paid for it. And other than if you are made redundant or terminated in accordance with, say, 15.4, you don't have any entitlement to be paid any sum after 25 the conclusion of your employment. So if you terminate yourself - - -?--- Yes.

- - - you're not going to get anything?--- Correct.

30 You also appreciate that you had obligations under the Corporations Act, including under section 182, not to improperly use your position to gain an advantage?--- Correct.

For yourself or someone else?--- Yes.

35 You turn next – to the next document in that same tab, please. It should be a couple of pages from where you were, it's called employee handbook?--- Yes, I have that.

40 Can you turn to page 9 of 26, the numbers are in the bottom right hand corner. Small writing, I'm sorry?--- Yes, I have that.

You see at the top of that page there's you, chief operations manager?--- Yes.

45 And it says you're responsible for the operations of Queensland Racing within established policy etcetera. And you lead the executive team, which is perhaps obvious given your title?--- That's correct. And that's as the chief operations manager at QRL?

Yes?--- Good.

5 And then there's, amongst others, Mr Brennan as the racing services manager and over the page Ms Murray. And they would be two members of the executive team that you lead?--- Yes.

Yes. If you turn next to page 15 of that document, please?--- Yes.

10 You can see there's reference to the code of conduct. And the final dot or whatever it is point under the heading "Corporate Governance"?--- Yes.

It says, "The chief operations manager and the director of integrity operations." That was Mr Orchard, director of integrity operations?--- That's correct.

15 "Are responsible for ensuring all QRL officials within their organisational area comply with the code"?--- Yes.

20 You didn't just have to comply yourself, but you had to make sure others did?--- Yes.

And the last dot point in the next heading, "There's an obligation generally on all officials", which I take it you would [indistinct] include you?--- Yes.

25 - - - "to ensure that resources are safeguarded and not wasted, abused or used improperly or extravagantly."?--- Yes.

And resources, this includes money?--- Yes.

30 The next document in that same tab, please, is the code of conduct. You can have a look at that. This is the version issued on the 1<sup>st</sup> of July 2010. So it's the Racing Queensland initial code of conduct?--- Yes.

35 There was an earlier one. It doesn't matter for present purposes but there was one for QRL as well as you recall?--- The one I'm looking at looks to be the one for QRL.

It seems to be the Racing Queensland one, if you look at – unless you've got a different one to me?--- I'm looking at the bottom left hand side where it's got July 1 2010. You're correct, yes.

40 Yeah. And if you look over the next page, you'll see that there's a message from Mr Bentley as chairman. And he's signing off Racing Queensland Limited?--- Yes.

45 Yep. And over to page 3, which is the next page, you'll see that there's reference to Racing Queensland being committed to fairness, impartiality and transparency in decision making?--- Yes.

And acting in the best interests of racing in Queensland?--- Yes.

And under the next heading, “Part 1: Introduction”, you’ll see that every Racing Queensland employee must act with the highest standards of professionalism, honesty – I think that’s a typo. Honest, it says. Diligence and integrity?--- Yes.

5 And down under definitions, there’s a reference to conflict of interest?--- Yes.

And you’ll see it includes a situation where a reasonable person would conclude that the official’s private interests interfere or are likely to interfere with proper performance of the official’s duties. And if you turn then to, please, 3.3 which is  
10 over the next page. The chief executive officer and again Mr Orchard at the very bottom of the page 5. Is that where - - -?--- Yes.

You are? Are responsible for ensuring that people comply with the code. That’s just a repetition of what we’ve seen already. And at 4.3, the next page again, please.  
15 Under the heading integrity?--- Yes.

The first bullet under that heading is, “All Racing Queensland officials must perform their duties with the highest standards of professional integrity and honesty etcetera to maintain and enhance public confidence.”?--- Yes.  
20

And under the next heading, 4.3.1, “Conflicts of Interests. An obligation to carry out duties impartially and regardless of personal preferences” in the first bullet?--- Yes.

And in the last bullet, “Take action to resolve any conflict between personal interests and official duties in favour of the public interest.”?--- Yes.  
25

Now, you’ve said that the public interest is as distinct from the personal interest. It means in the interests, really, of Racing Queensland who is supposed to be itself acting in the public interests and the interests of the racing industry; that’s right?---  
30 Yes.

Then 4.5, again it’s just the next page, please. The second dot point under the heading, “Economy and Efficiency. An obligation to ensure that resources are safeguarded.” And that’s, again, the same thing we saw previously in the employee  
35 manual. So it’s repeated in both the documents?--- Yes.

And you understood they were your obligations at the time you’d read these documents?--- Yes.

40 And signed up to them even though we don’t have signed copies here?--- Yes.

Can you turn to tab 41, please. Can you just read that letter so you remind yourself what it says?--- Yes, I’ll read that letter.

45 You mean you’ve read it recently in preparing to come here?--- I actually prepared that letter.

Sure, okay. You're familiar enough with it?--- Absolutely.

5 So it's a letter which you say you prepared, and it's dated the 5<sup>th</sup> of July, to Mr Bentley. And you talk about the outcome of the state election. It's going to be about a year from the writing of the letter. And at the bottom of that first page, you refer to having had a meeting where Mr Bentley had heard first hand about the impact on you and the other executives?--- That's correct.

10 And if you just look a bit further down that paragraph, "You're aware that each of us have relatively young families. And as responsible individuals, I require to plan for our future. We are not of the mind to take unreasonable risks with our future and gamble on a reformed company or new board retaining our services beyond the state election."?--- Yes.

15 And just over the next page. "As such, we request that you give urgent consideration to retaining the services of key people in the organisation."?--- Yes.

20 It's true to say, isn't it, that you're essentially saying, "You better do something about this or we're going to leave."?--- That's the – that's the essence of it. And the letter flowed from a meeting that – or a discussion at least that I have had with the chairman, along with Paul Brennan the following – the previous day.

25 Yes. And when you say that's the essence of it, are you qualifying what I've said? That is, it doesn't say anywhere in this letter, "We're going to leave". But it's a clear indication I want?--- Yes, that's correct.

It is – it is the – it is intended to be the implication?--- Yes, that's correct.

30 It's true also to say, isn't it, that from this point on, if not from the meeting before that time, you and the other three executives are on one side of a negotiation and the company's on the other side of the negotiation. You're seeking - - -?--- Before this time?

35 Well, just start at 5 July 2011. By the date of this letter at least, you're in a situation where you're asking for better terms or different terms, failing which you're threatening to leave?--- Principally, from this time forward negotiations occurred between the executives and the board.

40 Yes. I'm not – I'm really asking whether it's clear by this time that the two sides to negotiate?--- Yes.

And - - -?--- Yes.

45 - - - the executives are on one side and the board are on the other side?--- Yes, that's correct.

5 Okay. Thank you. Were you realistically going to leave?--- I'd spoken to the – the chairman at or about this time. It may have been at this meeting or it may have been the day prior. And I had personally outlined to him that – in not so many words that I was leaving but that I was not going to stick around and risk the prospect of either being removed from office or face a level of retribution in the event that there's going to be a change of control body or a change of government. I couldn't have been clearer with him, at least from my own personal point of view, that I had – I was getting pretty close to the end of my tether, and he would've understood that.

10 And you couldn't be clearer with him that you were getting close to the end of your tether. But you could've been clearer with him that you were actually going to leave; is that - - -?--- I didn't – well, I didn't have a job lined up.

15 All right?--- I didn't have anything in place that I was going to walk out the next day and head towards. But - - -

Had you sought another job?--- At that stage I had not, no.

20 Had you talked to anyone about the possibility of another job?--- No, I hadn't. No. No. I'd raised it with the chairman. My view is that I had a duty to raise that with him. As I mentioned earlier, Paul Brennan and myself were having a conversation about this very matter. And I can recall it clearly because Bob Bentley actually walked into the – walked into the office. And Paul was – he was complaining about the set of circumstances. And he knew exactly how I felt at the time. And we expressed our view to – our view to the chairman. And it was either at that – at that meeting where I'd advised him clearly, or the following day in front of the other executives, exactly how I felt. Had I been seeking employment? Had I applied for jobs at that time? No, I hadn't. I felt it my duty for him to understand exactly how I was feeling.

30 Right. But there's a difference between feeling upset about the way you're being treated and actually intending to leave, and I think what we got to when we were looking at that first letter is that you agreed the clear implication was that you would leave if things weren't done?---Yes.

35 And so – what I think you said is that you hadn't taken any steps towards leaving?---No. I hadn't.

40 And you were already in a position, weren't you, by this stage, given the horror of the rumour mill and the press reporting, where you thought your prospects of getting employment elsewhere, at least within this industry, were seriously hampered?---And – and I – I was of the view that they would continue to be diminished the longer I stayed.

45 Yeah. So it would get worse?---That's my view. Yes.



But it was already pretty bad?---It – it was, and that was the reason we were raising these issues with the chairman.

5 COMMISSIONER WHITE: Could I just inquire what was it that disturbed you most about the comments that were being made, some of which you've referred to in your letter, Mr Tuttle?---I think it was the – after having been in the industry for a considerable period of time, Commissioner, the – a lot of the commentary started to become very personal, of a personal nature. I mean we can all accept criticism for decisions and we put ourselves out there in senior positions to cop a reasonable  
10 amount of criticism; it goes with the territory. It started to become very personal and there was no question that it was commencing to affect some of our senior staff. Shara Murray, for example, would find herself in my office on a number of occasions in tears because of what she was being – she was being put through. And from my point of view, as I say, after having spent a long time in the industry and  
15 dedicated myself to serving the – serving the board, it disturbed me greatly. And I actually felt that the – the longer I stayed in the – in the position supporting the position of the board, the worse it would become for myself.

20 Could I just ask you a further question about this. What is it that you and the other three executives did or didn't do that brought about so much vitriol of such a personal kind?---I think it extended from the – the very nature of the – of the industry. The board itself was seen very much as a Labor Party board, so we had a – often if there was a – a position put, for example, from the LNP, the chairman formed the view that he was the one to respond to that. And what – what – what I  
25 think flowed from that is that there seemed to be a substantial shift in the industry to support the – the LNP. We were pegged as a – if you like, a Labor Party – a Labor Party board and consistently as we moved into 2011 and through 2011, our supporter base – the support from within the industry seemed to diminish. It seemed to shift and the further we went then the more friendless, if you like, we became in the  
30 industry. It was – and it was very difficult, because we were, in my view, pushing ahead with reform that was required by the industry but we – we were receiving pushback from so many quarters. Whether it was in relation to Albion Park, whether it was in relation to – Deagon was another example where – it was very challenging, because we believed that the reform that we were putting in place was not just reform  
35 that the industry – industry needed, but at the time it was going to be reform that would allow the industry to be sustainable in the longer term. And there was little – little support for that, to be quite candid.

40 I don't want to delay too much by asking things that might come up in due course in Mr Pincus' questions to you, but I'll be interested – in due course, not necessarily now – to wonder why it was that you were unable to persuade the industry that what you were doing was for their benefit. But we'll leave that for a moment?---Yes.

45 Thanks, Mr Pincus.

MR PINCUS: Thank you, Commissioner.

In your discussions with Mr Bentley at or around this time, did he ask you whether your implicit threat – which you say was intended – that you would leave was real, that you were – whether you were actually going to leave?---No. I don't – I don't believe he – don't believe he did.

5

Did anyone else ask you those questions?---Nobody from my work environment. My partner and I had discussed it on several occasions.

Right. But no one at Racing Queensland at this stage or – I think you're saying ever – said, "Are you really going to leave"?---Not – not that I – not that I recollect.

10

Right. And what about the others? Did any of the other three say to you, "We're really going to leave. We've got this other thing we're thinking about doing"?---I believe Jamie Orchard expressed that he would be looking to move on.

15

Did he say that he had another job or where he might go or anything like that?---No. He didn't say that he had another job or where he might go. No.

Right. So you'd accept, wouldn't you, that at this stage the threat of leaving is a fairly empty one, because none of you are looking to have other jobs. None of you have found other jobs. You've all got pretty high-paying jobs until, you think, a year from this point?---My view is that the appropriate thing to do was to raise these concerns with the – with the chairman. And when he walked in on the discussion that Paul Brennan and I were having, we were very plain in respect of the – the language we used about the environment at that time, and – and he understood that very well. At that particular discussion he identified the four people that he wished to meet with – I think it was almost the following day – and then the discussions – the discussions stemmed from that day. And – and the letter here will have emanated from that meeting that we had with Mr Bentley.

20

25

Yes. You see, I'm just focusing on the particular issue about the threat of leaving -- -?---Yes.

30

-- - which you'll see as we go through the documents comes up as a constant theme as a justification for everything that's done?---Okay. Good.

35

And what I'm trying to get the bottom of is whether it was real, and I'm really putting to you that it seems to me at least possible to conclude that there was never a real threat of you personally leaving or even of the others leaving, at least in any hurry?---I can't speak – I can't speak for the others, but Mr Bentley certainly – certainly understood my view. Had I made applications for any positions at that time? No. I hadn't. The view I had is the appropriate thing was to address that with the chairman before taking any course of action. I'd worked with Mr Bentley for a long period of time and I owed that to him.

40

45

Yeah. But you're telling the chairman that you're going to leave and that's not really the case?---I'm – I'm not sure how you form that view.

Well, I'm asking you - - -?---What you're saying is that I need to apply for a job to demonstrate that I'm going to leave, that I can't tell the chairman that look, I've had enough. I'm not going to hang around. I mean it was fairly plain – plain, the language I used with him.

5

And was the language you used with him, "I'm going to leave"?---No. It wasn't. It was I'm – I'm not going to hang around to be – to be sacked or to – or to face a level of retribution, and I don't think he could have drawn any other conclusion than - - -

10 But you thought that might have been a year away at this point?---Potentially.

Yeah?---But it was – the – the message he would've got from our discussion is that he understood that certainly I was unsettled. When he met with the four people he – he certainly understood the four people involved were unsettled, and I don't think he  
15 could've drawn any other conclusion that – from my own point of view, personally, that I could have been looking around to – to move on with my life.

But if he drew that conclusion he would have been wrong, because you weren't looking around?---I hadn't looked around at that point.

20

Yes. Okay?---I've already said that.

Turn, please, to tab 42. The first email you'll see is from Ms Murray to you on the 7<sup>th</sup> of July. She's attaching a briefing from Murray Procter?---Yes.

25

If you turn the page, please, you'll see at the bottom Ms Murray is sending it on to Murray Procter. He's, I should say, a solicitor at Norton Rose?---Correct.

30 And she says, "We're going to meet you at your office at 3 pm"?---Yes.

And he replies at the top, "Thanks. See you at 3 pm." The briefing is over a couple more pages?---Yes.

35 And there's a reference at the top, you'll see, to the four key executives?---Yes.

If you just remind yourself of this document, in case you're not familiar with it, the – from the bottom of page 1 for the next few pages is bad press lifted from Let's Go Horse Racing. Is that fair to say?---It – it also points to the popular new choice is the RQ board chairman - - -

40

Yes?--- - - - the bottom of page 2.

"There will be changes", is the essence of it?---Yes. Yes.

45 And if you turn to page 8 after the extracts from the press, it makes the point you've just made: the LNP government will seek retribution. And it says, "More than ever, we as key senior executives need to be protected to be able to proceed without fear or

favour.” And further down in the paragraph commencing, “On Tuesday, 5 July”, it says towards the end that there will be significant change to RQL should the LNP be successful - - -?---Yes.

5 - - - and “We as senior executives need certainty from RQL that they will recognise the commitment and value that we bring.” You’ve got that?---Yes.

The theme is again, isn’t it, you’re going to leave and that you want protection for the executives from changes to RQL. You want something from RQL - - -?---To remain.  
10

- - - so the executives are on one side of the negotiation and RQLs on the other?---Yes. And this would’ve stemmed from the – stemmed from the discussion that we had with the chairman on the 5<sup>th</sup> of July, I would’ve thought.  
15

I’m not asking you about that. I’m just asking - - -?---Yes.

- - - whether that’s right, that this document is consistent with what was, in fact, the case, which is you’re very much on one side and the company’s very much on the other?---Yes.  
20

And you appreciate that if the company changes it’s still the company, and so you’re seeking to negotiate a position which will protect you if there has been a change?---That’s correct. Yes.  
25

If you just go back to the first page. I’m sorry. I wanted you to ask you about the four key executives?---Yes.

Why it was that it was those four and not others, say, for example, Mr Snowdon, who was project director for the IIP?---Yes.  
30

Mr Carter, as the chief financial officer?---Yes. The four individuals were identified by the chairman.

35 Right. And with no discussion with you about who they might be?---No.

He just dictated, “These are the four”?---He dictated that he wanted to speak to four people - - -

40 Right?--- - - - and meet them, and they were the four people that he wanted to meet with.

And did you ask, “Well, hang on. What about others”?---No.

45 Why not?---The chairman was – the chairman – as I say, the chairman identified the – the four individuals, and at the time it – it – it hadn’t crossed my mind. We had the

– had a meeting and had the discussion and from that point on we simply moved with those four people – moved forward with those four people.

5 If you look at page 9 – I’m sorry – just taking you back to where you were on the other side of the page from where we’re looking at the words “protected” and “certainty”, you’ll see first there’s a list of things which are being done. That starts on page 8 and then towards the bottom of page 9 - - -?---Yes.

10 - - - what is to be done over the next six months. Are you with me? Have you found that there?---Yes. I am. Yes.

15 If you just look at that list, it’s true to say, isn’t it, that some of those things would have involved some executives other than the four key executives. For example, the second dot point, “Finalise strategic plan for the industry,” you would expect Mr Snowdon to have some input into that?---Mark Snowdon was the director of – director of infrastructure. That’s correct.

20 Which is really the strategic plan?---And I’m assuming it – it does relate to the infrastructure plan. I – I accept that that’d be the case.

And Mr Carter would also have some role, wouldn’t he, in relation to financial aspects of the strategic plan, how they would impact on the industry?---He – he certainly would, but so would I and so would Paul Brennan.

25 Sure. Two dot points down, “Review as required all internal and external policies.” That was to an extent – for at least some policies, it was a significant role of Mr Carter; wasn’t it? He was the owner of quite a lot of policies?--- Yes. This predominantly would’ve been driven by Shara Murray. Shara had responsibility for the section 81 and section 80 policies. And I believe she had that undertaken with Clayton Utz.

What – when - - -

35 COMMISSIONER WHITE: And would the chief steward be involved in the Racing Science Centre?--- In fact, I think – I think he’d re-negotiated that agreement, Commissioner.

Yes. Yes, I thought I’d read that. Thank you.

40 MR PINCUS: Thank you, Commissioner. On page 10, if you go about nine dot points down, there’s a reference to delivering the IIP. If there’s any doubt about the previous reference to the strategic plan, there’s a – there’s a Snowdon role there; isn’t there?--- Yes, there is.

45 And three dot points down from that, “Subsequent to the development of the financial key performance indicators, add to the set of non-plans will take the eyes that are linked to the payment of the operational subsidy.” I’m not sure what that

means but that's a role that sounds like it might involve Mr Carter?--- Probably Adam Carter and Paul Brennan, I would've thought.

5 And further down, three dot points from the bottom, "Review the approach taken in relation to the pricing for the use of race information, leading to the expiry of existing agreements." Again, pricing and modelling of that sort of thing was very much a thing for Mr Carter and his team?--- He would undertake that and I would've thought in consultation with Shara Murray.

10 And over on the next page, the 4<sup>th</sup> dot point down, "Implement a succession plan for the organisation, including interdepartmental considerations." That might have been a role for everyone who was there in relation to making sure that their job could be carried on properly once they left?--- I think [indistinct] head with the remuneration and nomination committee to commence putting that in place. Because the first  
15 opportunity we had to undertake an organisational restructure was two years after Racing Queensland Limited became effective. And so we would've – would've been looking at planning to put that in place to have an organisational review undertaken in '12/'13.

20 Yes, okay. And – but you agree with me, do you, that there would've been probably some role for Mr Carter and/or Mr Snowden in relation to that?--- In relation to the succession plan?

25 Yes?--- Adam Carter would've had some role in that. That would've been something that I would drive.

30 Okay. And so you've already said, haven't you, that you just never had any discussions about whether the list of executives who were key and needed to be retained should be longer than the one just in this document?--- As I mentioned earlier, the four executives were identified by the chair.

Righto.

35 COMMISSIONER WHITE: Did you have any understanding of the nine employees who were originally considered for remuneration uplift earlier in the year in May?--- Again, that stemmed from a discussion from the remuneration and nomination committee.

40 Well, that's Mr Bentley and Mr Ludwig?--- Correct.

45 So for all intents and purposes, I presume that's Mr Bentley?--- Mr Bentley and Mr Ludwig sat on that group, Commissioner. And Mr Bentley either asked to have the matter raised or asked to have a document prepared. I'm not sure which. But nonetheless, it went to the remuneration and nomination committee. And I understand a recommendation flowed from there to the board. And that recommendation included something in the order of eight or nine managers and five or six executive assistants.

5 So you were part of the preparation of that document?--- I'm not sure it was a document or whether it was simply raised on the – raised by Mr Bentley at the remuneration and nomination committee at that level. But it – it essentially encapsulated the management team, included our then-chief steward Wade Birch  
- - -

Yes?--- From memory. And again, five or six executive assistants.

10 Were you – were you familiar with that list of names?--- Yes. I was at the – I was at the – yes, I was at the meeting where it was initially discussed.

Yes?--- Yes.

15 Thanks, Mr Pincus.

MR PINCUS: Thanks, Commissioner. If you turn, please, to the next tab 43?--- I'm sorry, Mr Pincus?

20 43, please. The very next tab. You wouldn't have seen this document before. Have you seen this document before?--- No.

It's, you'll see, a file note of Norton Rose dated 7 July?--- Yes.

25 It's the meeting, presumably, which was referred to in the exchange of emails we saw with the briefing note a minute ago?--- Yes.

At 3 pm. And it records that you, Mr Orchard and Ms Murray were there at the top in the lined "attended" in the typed box at the top?--- Yes, yes.

30 Further down, it records that you were looking for financial benefits upfront and on termination?--- Yes.

But provided that the board is not exposed to ASIC investigation?--- Yes.

35 And so what you're asking for is benefits for you short of causing problems for the board; is that right?--- I can recall the – recall the meeting. In fact, I thought - - -

We'll go further through it. I just - - -?--- Yes.

40 Is that proposition broadly right, that you were asking for benefits for you but short of causing any problems for the board?--- Yes. We had – that's correct. We were instructed by the – or at least there was support from the board that we seek advice in relation to our own rights. And this meeting would've either preceded or followed that board consideration. But yes, you're right. We're looking to explore what –  
45 looking to explore what benefits that we could achieve as executives, yes.

Yes. But also, with one eye on the position of the board; is that right?--- Yes, that's fair to say.

5 If you go to the next page, you'll see there's point 1 and 2 near the top?--- Yes.

And it's the upfront increase point, which I think that we've already seen?--- Yes.

And then if you just read number 2, please?--- Yes.

10 And so what you're worried about is – I think we've touched on this. There's a new board and it doesn't want to pay you what you're entitled to. You want to protect yourself against the new board of RQL if it changes?--- Yes. The discussion would've been around a trigger point for redundancy - - -

15 Yes, we'll - - -?--- That's my recollection.

We'll get to that. I just wanted to – the basic proposition is, I think, one we've already touched on. So it's not necessary to go over it again. But since we're there, it's that your concern is about a new board of RQL coming in and trying to deny you 20 entitlements you might otherwise get under your employment contract?--- If I speak from my – my personal - - -

Yeah?--- Position on this and what is likely to have preceded this, we – the executives throughout this whole process, the timing of which I can't exactly 25 recount. But we did sit down and speak about this matter on a couple of occasions, the four of us. There's no doubt about that. My personal concern was that if we – if we got to a position – we did already have a trigger point in our existing agreements that if there was a change of a board, we're entitled to give effect to that particular trigger of our employment - - -

30 We looked at that at the start, you remember?--- Yes.

And it was not a trigger that gave you any rights other than a right to consider an offer of redundancy made to you by RQL if there was a change of the board. Do you 35 want to go back to that?--- Yeah, my recollection was that that was in favour of the employee, the original - - -

Well, we should just look at it again. If you just go back to tab 40, please, and look at the heading "Termination of Employment" on – at clause 15. 15.3, to confirm 40 that's what you're talking about?--- Yes, so should RQL cease to be the approved control body, RQL will provide you the opportunity to take redundancy.

Yes?--- So my view is that that's written in favour of the employee.

45 Okay. There's been a change of the approved control body. Then you have an opportunity to take redundancy?--- Correct.



Which does give you a payout?--- Yes.

5 But the point is that you don't have the opportunity to just resign, you've got to be offered redundancy. If you - - -?--- No, that's not my view at all. My view in relation to 15.3 is that should RQL cease to be the approved control body, as it states, that RQL will provide you the opportunity to take redundancy. So the opportunity's provided to the employee by the employer.

10 Okay. So there's a trigger. RQL ceases to be the approved control body. You then automatically get a right to take redundancy and to get - - -?--- Yes.

- - - a payout?--- Yes.

15 And as we've established when we look back at this, you wouldn't otherwise, except in that particular circumstance, be able to get any payout if you – if you resigned or left in the body of the second sentence?--- But the point I make is that that's – that's written in favour of the employee.

20 I understand that?--- Yes.

I'm just trying to get to my question, which is - - -?--- Okay.

25 - - - this is the only situation in which, other than you being terminated by RQL, in which you get a payout?--- Yes, correct.

Yes. So go back to where we were, which is under tab 43. And you were telling us about the background to the concept of the trigger?---Yes. Should I continue?

30 Yes, please?---We met on a couple of occasions to discuss this very point, and we had looked at various alternatives that may provide us with a position in the future that broadened that particular – that trigger, so not just a change to the control body. We looked at a number of options that may have been of material change to the board, change to the chair, I think, and a number of directors, and in those  
35 discussions the common theme that we kept getting back to was that one thing that would lead to one or more of those things occurring would – in the circumstances, would be a change of government. Given at least the suggestions that were out there in the media at that particular time, and we advanced the – if not at that meeting, at a later meeting with Norton Rose – the prospect of including that very occurrence as a trigger for redundancy.

40 Yes. Okay, we'll get to that in one second?---Okay.

45 Just a little bit further down the same page, you'll see, "Obligations: nothing to breach duties to company Corporations Act limits."?---Yes.

You're conscious in discussing with Norton Rose your own obligations, presumably, and also those of the board?---Yes.

And if you go to the next page, you'll see a reference to the very point we were just making in the middle of the page: trigger point, change of government?---Yes.

5 It's on the table here at this first meeting with Norton Rose?---Yes.

And over the next page you'll see, "Strategy 3B"?---Yes.

10 "Written in favour of the executive, this is part of the normal course of things."?---I don't understand the second part, or I can't put that into context.

10 What do you think that means, "the normal course of things"?---Well, the first part of it is straightforward.

15 You're saying we want it in favour of us?---Well, that's what we would have been saying.

20 Yes, and that's consistent with what we've got to, which is you're on one side and the board's on the other. You're trying to get something for yourselves, not for the company?---I can't expand on that.

20 It doesn't matter. Could you turn over to page 7? There's some numbers written in the bottom right-hand corner. About three paragraphs down from the top of that page you'll see the word challenge?---Yes.

25 What the board can do, why it would do it, will an extra benefit not compromise that. Again, one of the issues you're discussing as the balance to what you yourselves can get is whether you're going to damage the company by getting it?---Yes.

30 COMMISSIONER WHITE: Upon that point, I wonder, Mr Pincus, if I could just take Mr Tuttle back to page 2, Corporations Act Limits. It's under Obligations. Did you have an understanding that there might have been some financial limit that the Corporations Act imposed; in certain circumstances, a cap?---Commissioner, I don't recall that, but I certainly recall the discussion around the obligations within the Corps Act, but not necessarily limits, no.

35 All right, thank you. Thanks, Mr Pincus.

40 MR PINCUS: Thanks, Commissioner, and just back on page 7 a little bit further down from where we were, again, there's reference to outcome of the election as a trigger?---Yes.

45 Then it says, "In conjunction with other material". Do you remember discussion about what that means? Does that mean other triggers as well?---No, I don't, but I can certainly recall the discussion around the trigger.

Okay, thank you. And, finally, over the page: at the bottom right you'll see there's a reference to RQL being the client. Now, is it fair to say that there's some confusion?

Was there some confusion in your mind about exactly who is authorised as being asked to advise? I've established that you're on opposite sides of a negotiation- - -?---Yes.

5 - - - and you appreciate that it's not unusual for its own firm to be advising two people on opposite sides of the negotiation, and- - -?---The view I held was that Norton Rose was engaged to advise the executives, and that Racing Queensland Limited had offered to pay the costs associated with the advice.

10 Right, but you'll see that all the way through the material we've looked at so far, and you'll see in the material to come, there's also attention [indistinct] paid with Norton Rose to the position of the board. You don't want to get them in trouble: we've established that, haven't we?---We - - -

15 Not to breach duties to the company?---Yes.

Not to the breach the Corporations Act?---Yes, and we would have raised that.

Yeah?---Yep.

20 So it's true, isn't it, that Norton Rose is acting in the position of, really, considering both sets of interests?---Yes, but arguably separate. The interest of the board in terms of its duties, but, in my mind, it was very clear with Norton Rose that they were advising and acting in relation to additional benefits for the executives, and  
25 they were providing that advice to us as the executives.

Okay. The - I think you said earlier you agreed that they were also paying attention to the position of the board- - -?---Yes.

30 - - - and trying to ensure that they didn't go too far for the board?---That they were able to comply with the Corps Act, absolutely.

Yes, so it's right, isn't it, that they were advising and considering the position for both sides of the negotiation?---In the context with which we would - you would put  
35 it in terms of board compliance and not overstepping a mark or breaching the Corps Act in respect of the board, but in relation to benefits and what we could and what we couldn't do and what we couldn't ask for or agitate for, in my mind, Norton Rose were acting for us in that respect.

40 But aren't they just two sides of the same coin in that wherever they're looking at how much you can get they're looking at whether it's too much from the perspective of the board?---Yes.

So - - -

45 COMMISSIONER WHITE: What's that reference then under page 8 to, Mr Tuttle, Draft Advice to Board? What do you understand as being recorded here?

MR PINCUS: It's just to the left of where we're looking at?---Yes, it's under Shara. I'm not sure whether it relates to Norton Rose advice or Clayton Utz advice. To be quite honest, I'm not sure.

5 COMMISSIONER WHITE: All right, thank you.

MR PINCUS: Presumably, you're asking for some draft advice?---We were seeking advice. There's no question about that, yes.

10 Yes, and the suggestion on the face of this note is that consistent with what's said to the right that RQL is the client, that there's going to be advice drafted to the board of RQL.

MR PINCUS: I think with respect that might be misleading. It might be referring to the fact that Ms Murray is going to provide certain documents to Norton Rose.

15 COMMISSIONER WHITE: It might be, Mr Wilson. I was hoping Mr Tuttle might have been able to expand a little.

20 MR WILSON: Including the draft advice we've seen of the 1<sup>st</sup> of June.

MR PINCUS: All right.

25 COMMISSIONER WHITE: There seems to have been an alarmingly large number of draft advices, Mr Wilson.

MR WILSON: Yes, but I don't think it's fair to construe that document - - -

30 COMMISSIONER WHITE: I don't think it's unfair. Mr Tuttle is able to look at the page and do the best he can, and he's done the best he can. Thank you.

MR PINCUS: It's pretty alarming in fact for it to be said to be misleading to put some words on this page and ask what they mean, but that's Mr Wilson's objection, and I don't think I have any - - -

35 MR WILSON: [indistinct] construe them, and put a certain construction.

MR PINCUS: I asked him whether that construction was correct.

40 COMMISSIONER WHITE: All right. I think that Mr Tuttle's dealt with the question, and - - -

MR PINCUS: Thank you, Commissioner.

45 COMMISSIONER WHITE: - - - not been disadvantaged.

MR PINCUS: Could you turn to tab 44, please, Mr Tuttle? You recognise that document?---Yes. I've certainly seen that document.

5 And you'll see at the bottom there's the words, "Originated Bob Bentley Meeting, date 8 July 2011."?---Yes.

Again, this follows the day after the Norton Rose meeting we've just been looking at?---Yes.

10 And can you tell me who prepared this document?---Not with 100 per cent certainty, but I would have thought Shara Murray may have prepared the draft. It would seem that some of the information contained therein is similar to that which was provided to Norton Rose. The chairman's not a typist, I'm not a typist, but, you know, I may well have had input into the document, but I would suggest that Shara's prepared that  
15 for the chairman.

What do you say to the proposition that whoever actually wrote the words – you were driving this whole process, and the contents of this document and, indeed, other documents of this kind, which we've already looked at and we'll look at again, were  
20 directed by you?---No, that's not right. The – to put this in context, this is not a negotiation where we have, for individuals, completely distant from the board chairman. We would have briefed the chairman along the way. If I've had input into this document – and I suggest I probably have and others may well have had input into the document – but for – if you're implying that I'm driving that, this is my  
25 document, and this hasn't been provided to the chairman before it goes to the board, that's not true at all.

No, I wasn't implying anything. I was just asking you about the proposition I put to you, which is- -?---That I was driving it?  
30

- - - the contents of it is driven by you primarily?---I was one of four people that had an interest in the outcome of this.

35 And would you be able to rank those four people in terms of their degree of input into the contents of this document?---It's impossible for me to do that.

Were you the person who had the most input into the contents of the document?---I – look, I don't know that Jamie Orchard would have had a great deal of input into it. I suspect that the majority of the material contained in the document will have been  
40 material that was already available, so that looks to me as though it has been integrated into a document. Of the four people involved, Shara would be the more adept of all of us in terms of being able to construct a document like this, and I may well have had input, and I probably have had input, but I don't think it's right to say that I'm the sole person that's necessarily driving it. I may well have been  
45 coordinating it and assisting bringing it together, but it will have been in – it will have been in consultation with the – with the chairman. And in fact, looking at – looking at the – the last page of the – the document with that recommendation, my

understanding is that that's – that was a recommendation that was actually put forward – put forward by the chairman.

5 Well, we'll get to what later happens with this document when it goes to the board, but I'm just asking you – this is, I think, the first version of this document that we have, and so it's been created as a – what seems to be something to go the board meeting on the same day?---So this is a draft document, by the looks of it.

10 Yes?---Okay.

Well - - -

15 COMMISSIONER WHITE: So when you say that item 2 on the last page, on page 16, came from the chairman, are you saying that not – that from its inception that was an idea that he advanced to be incorporated in the board paper? Do you think - - -?---That's my recollection, Commissioner.

Yes. Yes. Thank you.

20 MR PINCUS: I'm sorry, Commissioner. I was distracted for a minute. Does that cover the points on the final page, that they were Mr Bentley's notions?

COMMISSIONER WHITE: In the origin.

25 MR PINCUS: Origin.

COMMISSIONER WHITE: I understand that. No.

30 MR PINCUS: And that's right, is it?

COMMISSIONER WHITE: That's just 2, but I haven't asked you about 3 and 4.

35 MR PINCUS: Well, can I go back to the – would you mind, Commissioner, if I go back and we get to – back to the - - -

COMMISSIONER WHITE: No, no. I just wanted to - - -

MR PINCUS: - - - go back to the start of the document.

40 COMMISSIONER WHITE: I just wanted to capture that answer from Mr Tuttle. Thank you.

MR PINCUS: Thank you.

45 So you said that a lot of the document is familiar and existing material and that's true, isn't it, for, for example, the stuff about scuttlebutt commencing on page 3?---Yes.

And that's pretty much lifted from the briefing a couple of days beforehand to Norton Rose?---It appears that way. Yes.

5 And then we get to page 8 and there's a bit more elaboration on that, I think, from Mr Oberhard and Mr Stevens. And over to page 10 after the end of the scuttlebutt extracts, again it's – there's familiar wording about "There's no doubt in my mind" etcetera. If you look down a bit further, it refers to the landscape having changed since a previous board resolution, which has been referred to earlier in the document. It doesn't matter for present purposes. The executives most at risk are those who  
10 will play a vital role over the next six months and the focus is very much on the next six months, isn't it?---Yes.

Do you agree with that?---Yes.

15 The four executives – and we've seen, of course, the names. And it says, "And it is for this reason that I recommend to the board an approach that provides these key executives with certainty prior to the election." Do you remember who prepared those words?---No. I don't.

20 What does it mean, to say "provide the key executives with certainty prior to the election"?---Well, I can only – only offer my view. It would appear to mean certainty in terms of employment over the next six months.

25 But you weren't going to get sacked before the election, you didn't think?---Well, I – I don't believe these are my words to start with - - -

Okay?--- - - - and you've asked me my view of it.

30 Yes. I'm asking what you think they mean. But they can't mean, can they, that you'll get sacked in the next six months?---No. That's correct.

35 So what do they mean, do you think? What's the board being told in this paper that says that you need to be provided with certainty? What's Mr Bentley mean, if they're his words?

MR WILSON: How can he answer that?

40 MR PINCUS: I'm asking him to tell me what he thinks the document means. He can read it.

MR WILSON: I was stopped this morning from asking either Mr Lambert or Mr Andrews about what was in the mind of somebody else. Now we're getting exactly the same thing.

45 COMMISSIONER WHITE: Yes. I think so. Perhaps, Mr Pincus, we could ask was this – in the preparation of this document, was this an – something that was discussed with the chairman, this section here that Mr Pincus has taken you

to?---Commissioner, I – I – I don't recall. I can recall the – the recommendations here of the 50 per cent increase and so forth. And if my recollection is correct, it was also linked to the executives giving notice at the end of December or early January and coming back on a contract basis and doing - - -

5

That was a discussion of a possible way of structuring this, wasn't it?---Yes. Yes. And if my recollection is correct, in our discussions amongst the executives we actually had concerns about this, about the prospect of receiving a redundancy payment at the end of the calendar year or early in January and then, you know, receiving that payment then coming back on a contract basis. And then if the LNP happened to be successful well, away we go, but if Labor happened to win the government we'd be repaying back the redundancy payment and going back on to further employment agreements. I think we discussed that and – and we had concerns about it.

10

15

Yes. But anyway, we're really just talking about this expression that's used here. And you – you're not able to assist us with - - -?---I'm sorry, Commissioner.

- - - the source of that idea?---No. I'm not. I can't recall.

20

MR PINCUS: Mr Tuttle, you told us – and I went through this a minute ago for the purpose of establishing the basis for this question – that you were involved - - -?---Yes.

25

- - - in the drafting of this document. And that's why I was asking you whether you - - -?---Yes.

- - - knew what the words in the document you were involved in the drafting of meant?---Yes.

30

And the answer is you don't know what they mean?---Correct.

Okay. Then there are "My Recommendations", and what do you say to the proposition that those recommendations are not Mr Bentley's recommendations, despite the way this document is drafted, but rather what you and the executives were seeking?---No. That's incorrect.

35

What about saying that it's your wish list, what you seek from the board?---No. It's not.

40

If you look down to the bottom of those four points – so this is about a third of the way down page 11. See that paragraph commencing, "These recommendations are not made lightly to the board"?---Yes.

45

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

Do you know who wrote that paragraph?---No. I don't.



- 5 You can see that it says, “They are made following the receipt of the attached correspondence,” and I take it you agree that the attached correspondence in context must be the letter of 5 July that we’ve already looked at. If you look over at page 14 you’ll see the point made?---Yes.
- 10 If you just go back to page 11, please, the first thing is – as an explanation for why the recommendations are not made lightly to the board – is that letter. Yes?---Yes.
- 15 And that letter we’ve been through already. It’s the letter in which you’re saying, “We’re going to leave unless you help us”?---Yes.
- 20 Number 2 – there’s no numbers in this, I know, but the next point made is consideration - - -?---What page are you on? Sorry.
- 25 Sorry?---Still on - - -
- We’re still in the same paragraph?---Page - - -
- 30 So we just covered the point “the receipt of the attached correspondence”, then if you just look further along in the same paragraph it says, “Further consideration of the unreasonable and changing circumstances under which the people are expected to perform”?---Are you still on page 11? Sorry.
- 35 Yeah. On page 11, if you just stay within the paragraph commencing, “These recommendations” - - -?---Yes. Got you.
- 40 Don’t move beyond that paragraph until we go somewhere else?---Yes.
- 45 So in the second line, the words, “Further consideration of the unreasonable and changing circumstances”?---Yes.
- 50 And further down: “The increase industry interest in who will replace them”?---Yes.
- 55 The next one: “The substantive outcomes that have been delivered by them”?---Yes.
- 60 And 5 – sorry. The final point: “The work ahead of them in the short term and their commitment to both RQL and the industry”?---Yes.
- 65 Do you think it’s fair to say that apart from the last one, which is the work ahead of you in the short term, all of those things are matters favouring the executives, not RQL – reflecting the executives’ interests and not those of RQL?---Well, the substantive outcomes that have been delivered by them would be something that I’m assuming previously would have been favourable to RQL.
- 70 Sure, but we’re looking forward at the proposition that you need to be given some special conditions in order to keep you, so that position in the past can’t be favourable to RQL anymore, you know?---It can’t be favourable to RQL - - -

Unless they're just paying you a reward for what you've done in the past, which doesn't benefit them. It only benefits you?---No, but notwithstanding the -- the people we're talking about, you know, have -- have contributed significantly to a range of outcomes that continue to deliver benefits to the industry. And I -- I take your point that we're -- we're -- we're dismissing all of that completely and we're only looking forward, and I agree with you that in terms of the relevance from that point on, disregarding what contribution there's been previously, yes.

10 We're looking only at the next six months, basically?---Yes.

Okay. And again you'll see in the next paragraph the words "security" and "certainty", which we've seen in previous documents?---Yes.

15 And the recommendation is, if we go to the final page, page 16 -- we'll just note those. The commission's already asked you a question about those?---Yes.

And I don't think we need to look at 3 to 4, unless the Commissioner has any question about those.

20 COMMISSIONER WHITE: No. I don't think so. Thanks.

MR PINCUS: Turn to 45, please. Commissioner, I note the time.

25 COMMISSIONER WHITE: Is that a useful time to stop?

MR PINCUS: We haven't got very far, but that's as good as a time as any to stop.

COMMISSIONER WHITE: All right, then. Thank you.

30 Mr Tuttle, we'll resume at quarter past 2?---Thank you.

**THE COMMISSION ADJOURNED** [1.00 pm]

35 **THE COMMISSION RESUMED** [2.14 pm]

40 **MALCOLM TUTTLE, CONTINUING**

**EXAMINATION BY MR PINCUS**

45 COMMISSIONER WHITE: Thanks, Mr Pincus.

MR PINCUS: Just the same folder again, please. Mr Tuttle, if you could just back to 44, which is where we were up to before the luncheon break, please?---Yes. I have that.

5 And look over that final page, 16, the last page before tab 45?---Yes.

Can I just confirm my understanding of your evidence about point 2 at the top of page 16, which is that those points were not what I think I described as your wish list, but rather points generated by Mr Bentley?---That's my recollection.

10

Turn to page 45, please – tab 45. I'm sorry. Just note that there's an email here originally from someone called Shaun Rigby, and you forwarded it on to Ms Murray or Reid, saying, "Please include the appropriate bits and pieces from this in the file. It is critical that the file is detailed and up-to-date," and you asked, "Have you been able to concern LNP policy yet?" And you're chasing the Norton Rose advice. Now, it's fair to say that the stuff which you're forwarding is more bad press, if we can call it that in broad terms?---I suspect that'd be the case.

15

20 And when you refer to "the file" - - -?---Yes.

- - - you mean a file that's being kept of bad press?---Yes.

20

And the point of that is to support the idea that your employment terms should be renegotiated because of the bad press?---I think it's – it's to demonstrate what was occurring at the time. Often it's difficult to recollect after the date, but if we had copies of the – the bad press, the adverse publicity that we were receiving – and of course, if we had that then on a consolidated file, it gives rise to the concerns we had – it gives evidence, if you like, to those things that we were experiencing at least in the media. Yes.

25

30

That answer was yes, really?---Yes.

Okay. Then you say it's critical the file is detailed and up-to-date and that's the same point, really. You're saying it's really important?---Yes.

35

And would you agree that this looks like you're at least heavily involved in the process and to this extent at least, you're driving it? You're urging Shara to make sure – sorry – Ms Murray to make sure that the file is right and detailed?---No. I think the email speaks for itself. I've – I've asked her to maintain the file. I've expressed that it's critical to keep it up-to-date.

40

Thank you. And when you say, "Have you been able to confirm LNP policy yet?", do you remember the context of that question?---I don't. I – I assume that there was some suggestions, perhaps in the attached media there, that hinted at what the policy may have been.

45

5 The policy to be – to change the board and some executives?---And probably more broader as well, because it seemed that – my recollection is that at least up to that date the policy was very much opposed to what the existing board had done. But yes, that would also include changes to the – the control body and potentially board members, of course, and executive staff as well.

10 In the context – you agree, I assume, that you’re asking to confirm whether there’s some LNP policy that further supports the idea that you’re going to be gone if there’s an election?---That – that would be part of it. Correct.

15 If you turn to page 46 – tab 46, please. The first email doesn’t matter very much, but it’s showing that Ms Murray is keeping you up-to-date with her communications with Norton Rose. They’re still working on the advice – you see that towards the bottom?---Yes.

20 And you just say, “Thanks.” And then the next email, dated 15 July, you’ll see Mr Procter sends – this is about a third of the way down the page – to Ms Murray an advice. He says, “We provide our advice at this stage in draft as requested to gauge your views on the approach of the board, and once it’s finalised we can help you with the contracts.” Yes?---Yes. I see that.

And she forwards it on to you later the same evening?---Yes.

25 And if you turn to the draft advice itself, please, can I ask you, for the point of comparison, to first go to tab 50. And I hope the document under tab 50 is stapled so you can pull it out without losing control of the document. If it’s not, then I’ll just hand you a stapler. Thank you?---Thank you.

30 Now, can you see – just looking at the document that you’ve got held separately?---Yes.

Do you accept that that’s – just have a look at it. That’s the final advice from Norton Rose. If you look at the final page you’ll see it’s signed by Mr Procter?---Yes.

35 Dated the 20<sup>th</sup> of July?---Yes.

And if you could have the folder back, please, and then go – get tab 46 open.

40 COMMISSIONER WHITE: Do you want to keep Mr - - -

MR PINCUS: I want to - - -

COMMISSIONER WHITE: - - - Mr Tuttle to keep 50 with him?

45 MR PINCUS: Yes. I’d like to have – you to have both, please, Mr Tuttle. If you can have - - -?---Yeah. Sorry. And the - - -

If you can have tab - - -?--- - - - the tab I'm at now?

5 Can you have tab 46 open, please, at the second page, which is – third page, which is the commencement of the Norton Rose draft advice of 15 July?---Sorry. Did you say tab 46?

Tab 46 should have in it – the first page will be an email. The second page is another email - - -?---Yes. Yes. I've got it.

10 - - - we've looked at. The third page is Norton Rose, 15 July 2011?---Yes. I have that.

15 You've got that. Okay. But if you could – it might be a little bit awkward, but if you could just have visibility of both those documents - - -?---Yes.

- - - that one and the final advice. That would be good?---Yes.

20 So the 15 July advice, you accept, is the first – it's a draft and it's the first advice you've got back from Norton Rose on this topic?---It appears to be a first – first advice, but it's certainly a draft advice.

Yeah. It's a draft advice of the 15<sup>th</sup> of July?---Yes.

25 Now, just looking at – focusing on document 46 at this stage, you'll see in 1.1 that they have been instructed – sorry. It's addressed, firstly, to the chairman of Racing Queensland?---Yes.

And you'll see that's the same in the final advice?---Yes.

30 It looks like it's advice to Racing Queensland?---Yes.

And in 1.1, consistent with that, instructed to advise the board of directors – which is really Racing Queensland?---Yes.

35 And 1.2 you'll see you've been – that Norton Rose has been instructed to advise on options available to address the ongoing need to retain and reward executives etcetera, taking into account the legal obligations imposed on the board?---Yes.

40 And again, that's the same in the final advice?---Yes.

But the point is, as we've discussed in relation to a number of other documents, there's a sort of a dual role. Norton Rose is writing to the board and they're really taking into account, it seems, both sides of the negotiation?---Yes.

45 And that's further confirmed, isn't it, in 1.3 in this letter, where you consider the general obligations on the board. 1.3(2): "Avoid breaching the act". Point 3:

“Provide an overview of the types of benefits that we consider would be appropriate in circumstances – in the circumstances that the board may wish to consider”?---Yes.

5 Yes. Thank you. If you can turn over the page in both documents, please?---Page 2?

Page 2. Yes. Again, just noting on the way past, in 2.1 under the executive summary, in the third line of the preamble it says, “The board should have regard to factors including” - - -?---Yes.

10 And again, that goes to what I think we got to before lunch, which is really what they’re doing is seeking to give you advice about what you can get from the board, but without going too far?---Yes.

15 Yes. And these are the sorts of factors they’re trying to address?---Yes.

Then 2.2 – it says in point 1, “The proposed new benefits are necessary for the retention of the executive”?---Yes.

20 And you see that is another point, again, we looked at in a number of documents before lunch, which is the emphasis on retention?---Yes.

25 So you can see where it says, “In circumstances where” – point 1 – “the proposed new benefits are necessary”. Do you agree that’s founded on the assumption that you will leave, you won’t be retained, if not for the proposed new benefits?---Yes.

And point 2: “The retention of the executives is in the best interests of RQL,” and again that’s founded on the idea that you will leave if not for the – some new benefits?---Yes.

30 And those are two of the three points on which the conclusion may follow that the resulting agreement would not be deemed to be unfair or unconscionable?---Yes.

In 2.3 – this is the first place where we find some changes - - -?---Yes.

35 - - - between this draft and the final version. It says in the introductory words, “Our suggestion of appropriate benefits that are not disproportionate and that would be in the interests of RQL is as follows.” That’s the draft version, and in the final you’ll see that the addition is the words “are the most straightforward” in the first line of 2.3 in the final version?---Yes.

40 And then point 1 in the draft, it says, “Our suggestion” – just reading the preamble again – “of what’s appropriate and in the interests of RQL is an increase to the TRV of each executive of between 10 and 20 per cent”?---Yes.

45 So they’re saying in their first advice, whether it’s a draft or otherwise, “You don’t want to go too far, and you’re not going too far. You want to increase no more than 20 per cent”?---Yes.

And you'll see that in the final version it's gone up to 30 per cent?---Yes.

And you'd agree that that's not consistent with their first advice?---Correct.

5 Then point 2, the inclusion of a new five-year term has been changed in the final advice, so that the current term is simply retained?---Yes.

Point 3, there's a reference in the draft to a notice period for termination of no more than 12 months?---Yes.

10

And there's nothing to that effect in the final?---Yes.

The notice period is gone. Then point 4, the redundancy: we can – in your present purposes, but look at point 5 please – the inclusion of two incentive bonuses is in the draft, and there is a couple of sub-paragraphs?---Yes.

15

A retention would be a retention bonus of, say, 12 months for the executive TRB, pay on completion of the term, et cetera, and the point of that is that it's an incentive to stay on. If you stay longer you get more money in fact?---Yes.

20

To accrue?---Yes.

And you'll see that that's gone completely from the final version?---Yes.

25 And, again, without wanting to labour the point endlessly, you agree that this is part of their advice – at least in their draft advice – as to what benefits would be appropriate in the interest of RQL and not disproportionate, though benefits that would be appropriate in the interest of RQL include a retention bonus?---Included in the draft, yes.

30

Yes. In 6, the inclusion of the material under a change clause with a trigger, and you'll see here that the trigger includes various things; RQL ceasing to be a control body?---Yes.

35 This is in the draft, 2.36, and in the final, there's a different material adverse change provision which includes, relevantly, the addition of change in state government?---Yes.

40 Now, if we can look, please, at – sorry, I should just ask you: do you know why despite you having asked in that first meeting with Norton Rose, and we looked at earlier the notation about the trigger being the change of state government, why hadn't it made its way into the draft advice? Do you remember?---No, I don't.

45 Okay. Then if you look at point 7, please? This is still under 2.3 in the draft. The inclusion of a clause limiting the payment of benefits as defined in the Act, "paid in connection with the termination of the executive's annual" – sorry – "outreach

annual based salary as defined in the Act.” That’s a cap of some kind on the benefits?---Yes, I see that.

5 And you can see that doesn’t arise in 2.3 of the final advice?---Yes, I see that.

So, just looking at that part of the two versions of the document, you agree that when Norton Rose provided their first written advice, albeit in draft, they were saying all of these things which have been removed by the final version are necessary for the protection of the board? They’re in the interest of RQL, and they’re not  
10 disproportionate?---Yeah, and at 2.3 they point out that it’s their suggestion of appropriate benefits, correct.

Well, it’s their suggestion as lawyers who are being asked for advice?---Yes.

15 And so when the board finally gets this advice in final form it doesn’t have the benefit of the things which were the suggestions in the draft? Forget about – it doesn’t have the benefit, it doesn’t see in the final version of the advice those things which we’ve just observed are missing?---That’s correct, yes.

20 Now, can we just keep running through the document, please? If you look at 2.4, the general effect of these benefits - - -

COMMISSIONER WHITE: Which document - - -

25 MR PINCUS: I’m sorry, in the draft, on page 3.

COMMISSIONER WHITE: In the draft, yes, thank you.

MR PINCUS: Thank you, Commissioner, and the change, I think, between this  
30 version and the final version is that if you look at the final version you’ll see on the bottom of page 2 in clause 2.4 the words, “We consider that this will provide the executive with the protection they are seeking in the current environment, and satisfy RQLs desire to maintain the executive’s employment.” And that’s not in 2.4 of the draft; that it had been an addition in the final version?---The clauses are different,  
35 yes.

Turn over, look at 3.1, please? You can see in the draft version that there is a reference at the end of 3.1 to placing at risk a smooth transition to an alternative structure if one was implemented as a result of a change in the state  
40 government?---Yes.

And you can see, can’t you, that that’s not in 3.1 of the final?---Yes.

45 And, again, Norton Rose’s inclination, at least in the draft advice, is to say you better be careful, there’ll be a risk to the smooth transition?---Yes.

And the version that is finalised to go to the board: that’s [indistinct]?---Yes.



Can you look at 3.18 of the draft, please?---Yes.

It outlines above that executive concerns which are similar to the sorts of things we've looked at before?---Yes.

5

And it says in 3.18, "In this context it would be prudent of any organisation to put in place appropriate measures to ensure the ongoing retention of their senior executives in our view." And if you could look, please, at the final version, I think the equivalent provision is in 3.16. Can you agree with that?---Yes.

10

You found that?---3.16 in the final.

3.16 seems to be broadly to the same effect as 3.18: do you agree there?---Yes.

15

And - - -

MR WILSON: 3.17.

COMMISSIONER WHITE: Yeah, I think.

20

MR PINCUS: I'm sorry. Sorry, I've got the wrong one: 3.17, thank you.

COMMISSIONER WHITE: Yes. Thanks, Mr Wilson.

25

MR PINCUS: Thank you, Mr Wilson?---17 of the final advice?

3.17 in the final: I want you to look at 3.18 of the draft, and 3.17 of the final?---Yes.

30

And the difference it seems is the word ongoing retention; the word ongoing appears before the word retention in the draft?---Yes.

And it's been removed from the final version?---Yes.

35

And it seems that that shortens the horizon of the desired intention so that ongoing tends to suggest not just for [indistinct] which we looked as being the focus- - -?---Yes.

- - - but beyond that too?---Yes.

40

And that's consistent with the removal of the retention bonuses?---Yes.

So that the focus – the difference – the shift in focus has been very much from retaining generally and for, you know, as long as necessary, to retaining only until the election. You agree with that?---Yes.

45

Then if you could go, please, to 4.5 of the draft? Just noting in passing there's a reference to directors and other officers et cetera are not in properly using their

position to gain an advantage for themselves or someone else, and we've looked at that in the context of your employment agreement under the Corporations Act and the Code?---Yes.

5 And then at 4.11 of the same document, you see the words "Accordingly, part 2D.2 of the Act" – which is the Corporations Act – "does not apply to the executives."?---Yes.

10 But then it goes on under that in 4.12 to 4.14; if you could just briefly read that, please to yourself?---Yes.

And you see that that refers to the concept of there being – despite part 2D.2 of the Corporations Act not applying, their view is that the board should nevertheless, essentially, try and comply with it or take it into account?---Yes.

15 And that's advice in the context of providing a defensible position. You'll see in 4.12, "Ostensible compliance with these provisions would provide RQL with a defensible position."?---Yes.

20 So it's advice for the benefit of RQL about how it can give you something but not go too far?---Yes.

25 And if you look at the final version, please? If you go to page 5 at 4.11, you'll see the same words about part 2D.2 not applying?---Could you just point out the second of the final advice again, please?

Sorry. If you go to the second advice?---Yes.

30 Yes, and go to page 5?---Yes.

And then go to 4.11?---Yes.

And you'll see the words, "Accordingly, part 2D.2 of the Act."?---Yes.

35 They are words which appear at 4.11 of the draft?---Yes.

But you'll see that the bits from 4.12 to 4.14 are missing in the final version?--- Yes.

40 And again, what that means is that the concerns apparently held by Norton Rose about how the board should provide itself with a defensible position, expressed in the draft advice, are not provided to it when the final version goes to the board?--- Yes.

45 If you go to point 6 of the – paragraph 6 or clause 6 of the draft advice, please. And you'll see in 6.4 it says, "In our view, and taking into account the need to retain the executives," again with the emphasis on the risk that you will go if not for some benefits; do you agree with that?--- Yes.

“We would consider a moderate increase of between 10 and 20 per cent would be reasonable.” And the implications of that are that a bigger increase would not be reasonable, at least in the draft?--- Yes.

5 And if you look at 6.5 of the final, it’s gone up to 30 per cent?--- Yes.

And there’s the addition of the words, “Because that would be the most straightforward way to address the retention concerns and would not constitute a breach of the board’s relevant legal obligations in our view.”?--- Yes.

10

And again, the emphasis is on addressing your retention concerns. So the primary driver is it’s necessary and it’s – that’s the easiest way to keep you when you would otherwise leave?--- Yes.

15 Then at 6.5 of the draft, there are some words which you’ll see don’t appear in the final version. You can just read those to yourself, please?--- Yes.

And again, the emphasis is on retention; isn’t it?--- Yes.

20 Longevity consistent with the idea of having a bonus for staying on, for example, which we’ve seen has been removed?--- Yes.

And under the incentive plans, of course, that section has just gone in the final version?--- Yes.

25

Under notice of termination without cause, you’ll see in the – I’m looking at the draft still, of course, in 6.11 it’s a matter of striking a balance between an excessive payment and a reasonable one, which is a point we’ve discussed?--- Yes.

30 And that doesn’t appear in the final version. Can you see that anywhere?--- Yep.

And 6.12, you can just read that, please, in the draft?--- Yes.

35 Again, there’s a reference to a cap, and the risk that anything higher than the cap could be viewed as inconsistent with the duties before those to RQL under the act?--- Yes.

So they might actually breaching their Corporations Act duties if they go higher than the cap. And again, that bit doesn’t appear in the final version of the advice?--- Yes.

40

In 6.19 of the draft, please?--- Yes.

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

45 Now again, there’s no reference to a change of government in here despite you having already talked to Norton Rose about that. And you don’t know how that –

how that came about. At some stage, it does make its way into the final version?--- Yes.

5 And I'm not aware of any document which explains how that happened. Do you know how it happened?--- Yes.

How did it happen?--- The – after we'd received the initial advice, I can recall we met as a – met as a group to discuss the initial advice.

10 Yeah, sorry. Can I just interrupt. We will go through the story and you'll have a chance to tell me the story. I just want to know - - -?--- I'm sorry.

- - - specifically about the insertion of that part, not of the whole process. Do you remember whose idea it was to insert that and how it was communicated to Norton Rose - - -?--- Not - - -

- - - that it should be inserted?--- Not specifically whose idea it was. We had several discussions I might have mentioned earlier that we felt the one thing that would give rise to a change in the – the company, the board, the chairman and a number of  
20 directors. We kept coming back to a change of government. And I don't recall who necessarily advanced that. Whether it was myself or others. But it came out of discussions that we had as the four executives, and the – if not all of these changes, certainly the majority of these changes would've been advanced as a result of a discussion between the executives.

25 Yeah. Well, we'll get to that process in a minute?--- Okay.

30 But just on that particular one, the answer – you're not really sure how it went from not being in the first draft to being in the final one. But you say it was one of the things you discussed and it must at some stage have been communicated to Norton Rose?--- It was advanced – it was advanced by either myself or Shara at a meeting – at a meeting with Norton Rose.

35 Before this. We've seen that; haven't we?--- No, subsequently, I believe.

Again subsequently, okay?--- Yes.

40 And you said, "Don't you remember we talked to you previously about the change of government being a trigger"?--- I - - -

"Why didn't you include it in your advice"?--- I'm not sure how the conversation went, but it was – the change of government as a trigger was certainly advanced to Norton Rose a second time.

45 Okay?--- No question about that.

And do you remember what their response on that was?--- I don't.

But they included it anyway in the final – in the final advice?--- Yes.

Can you just look at 6.21 of the draft, please?--- Yes.

5 As an additional protection – now, I can tell you that the words up to “deed of release” appear in the final. But then the words after that do not?--- Okay.

The reference to a transition period?--- Yes.

10 And it’s been removed. So the recommendation for protection for RQL that there be a transition period have been removed, along with – we’ve already seen the changes to the notice period?--- Yes.

And finally in the draft, please go to 6.25?--- Yes.

15

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

They’re offering an alternative to other proposals. And that alternative doesn’t appear in the final - - -?--- Yes.

20

- - - version. If you could just please put 50 aside and it can be inserted back in at some stage. Perhaps hand it to Ms Adams. Now, all those bits have been removed. Ms Murray has said, I can tell you, that the changes were all yours, and again that you were driving the process. What do you say to that proposition?--- I’d reject that completely. I had active input into the – into the changes and – just as all of the executives did. This wasn’t – this wasn’t Malcolm Tuttle running a line by himself for himself. We met as a group on several occasions. The – each of the executives had active input into the – into the meetings, just as I will have at the time. And then prior to taking the changes that we – we were seeking, further changes we were seeking from Norton Rose, we had a – if memory serves me correctly, we had a meeting with the chairman of Racing Queensland Limited before we advanced those changes.

25

30

Well, that’s important. Can we look – Mr Bentley says that he – and I’m telling you this in fairness. There was a comment that he never saw advice with those matters that we’ve seen have been removed in it?--- In the draft?

35

No, he never saw the draft. So he only ever saw the final?--- Look, in terms of the circulation of the drafts or otherwise, that wouldn’t have been a task that I would’ve undertaken. More than likely, that would’ve been a task that Shara would’ve undertaken in terms of distribution. So I – I couldn’t say whether the chairman saw the draft or not.

40

But your involvement in all these discussions about the draft and coming up collectively, as I think you portray it, with the other executives with changes?--- Yes.

45

We've been through them all and you've agreed that they're significant changes. Because the board not being told all these things – that Norton Rose, in their first version of the document, thinks they're important?--- Yes.

5 And you must have been aware of the significance of removing those things before giving it to the board?--- I'm not certain that it was something that necessarily was – was top of mind. We did say to Norton Rose at least on one occasion that – and we touched on this earlier, that we required Norton Rose to have consideration for the board's position in terms of compliance with the corps act. But in terms of  
10 advancing these – these changes, the view that we had was that Norton Rose was advising the four executives, and I've advised that to you earlier, that we did not believe that Norton Rose was advising the board in relation to this matter. And we felt that we were in a process of negotiation in terms of – in line with the board resolution that we were able to seek advice in relation to our rights, and saw  
15 ourselves as being in a process of negotiation.

But what you were negotiating at this stage, Mr Tuttle, is with just – in between you, the executives and Norton Rose about the terms of an advice which is going to be addressed to the chairman of the board?--- Yes.

20 And deals extensively with the position of the proposed benefits to the executives?--- Yes.

And the effect of that position on the board, on the company?--- Yes.

25 You know that. You know all that?--- We've just been through it.

Yeah. So when you keep saying it's advice to the executives, you know it's advice – substantially it's the board about the board's position and what it needs to do to protect itself?--- The advice that we were seeking was in accord with the board resolution in terms of advice for the executives. Now, whether this has been provided to the chairman or more broadly, I'm unable to say. It wouldn't be an activity that I would normally undertake.

35 Okay. So do you say you just don't know whether Mr Bentley's right or wrong to say he never saw the final version?--- I don't know whether the chairman had seen it. As I say - - -

COMMISSIONER WHITE: You mean the draft version.

40 MR PINCUS: Sorry, the - - -?--- The draft version, sorry.

- - - the draft version sorry. Thank you, Commissioner?--- Yeah, I'm still with that. It wouldn't have been an activity that I would've undertaken. I did not provide that to the chairman to the best of my recollection. But that wouldn't be surprising as it would be something that Shara would distribute or hand to the chairman. But I'm  
45 unable to say whether Shara did that or not.

5 You agree that you should've checked whether Shara did that or not because of all – the importance of all of those things which are in the draft and are not in the final. If you don't know then shouldn't you have known?--- Not necessarily, I guess. At that stage – at that stage, we weren't necessarily going to be privileged to what the structure of the final advice was necessarily going to be. But I keep coming back to what we did stress with Norton Rose is that we wanted to ensure that the board was going to be protected in respect of anything it adopted on these employment agreements. We set that out very clearly to Norton Rose early on.

10 Well, sure. But they've given you a whole series of things which they say are necessary for protection of the board, and which we've just been through at length - - - ?--- Yes, we have. Yes.

- - - to show they were all removed?--- Yes.

15 So when you're saying that your focus was on making sure the board was protected, it doesn't look like that; does it? Because all those things that are for protection of the board get taken out of the draft and don't appear in the final?--- Save for the fact that we did portray that to Norton Rose early on, that we had – that we were  
20 concerned that the board would be compliant with its responsibilities under the corps act. We said that early on.

Sure. And I'm not talking about Norton Rose's position?--- No.

25 I'm talking about your position?--- Yes.

Which is that you know, when they've given you this draft advice, it's got all this important stuff in it which is for the protection of the board - - - ?--- Yes.

30 - - - talking in broad terms. You've agreed with that?--- Yes.

And you know it's not in the final version. Those two things aren't in dispute; are they? You accept both those things?--- Yes. We've just been through the documents, yes.

35 And so you also say that your concern was, among other things, for the protection of the board. But how is it consistent with your concern for the protection of the board to have allowed both things to be removed without ever checking, for example, whether it was ever communicated to the board or to the chairman that those things  
40 were in the first version of the advice?--- Well, I can't elaborate any further because I'm not aware whether the chairman received this draft advice. I didn't pursue it with Shara Murray, asking Shara to provide it necessarily to the board or to the chairman. But I'm unaware as to whether or not the chairman received the advice.

45 COMMISSIONER WHITE: Mr Tuttle, can I just ask you this. You said that between receiving the draft - - -?--- Yes.

- - - and the final advice from Norton Rose you had a meeting with Mr Bentley?---  
Yes.

5 Did you, by any chance, observe whether he had a hard copy of the draft advice?--- I  
can't recall, Commissioner, as to whether that was handed to him or whether he  
received it at that time. I really can't say.

10 Well, I really meant did he have a document that he was referring to? Did you talk  
about the detail of what was in the draft advice?--- I'm sorry, commissioner. I don't  
recall as to whether we had the advice or not with him.

15 All right. Can you – and you may be going to ask this question anyway. At that  
meeting with Mr Bentley, between the two advices, did you discuss the subject  
matter of the draft advice with him?--- We would've discussed the – not necessarily  
the compliance matters that we've been dealing with. But we would've spoken  
about the variations between the two advice that we were seeking as the executives  
in terms of the upside in relation to the increase in salary, the materially adverse  
change. They will have been topics that we certainly would've discussed with Mr  
Bentley.

20 You're probably going to produce – go through all of that with Mr Tuttle.

MR PINCUS: Well, yes. I think I will get to those.

25 COMMISSIONER WHITE: Because I want to ask a lot of questions about it if you  
don't.

30 MR PINCUS: If I don't, then please do. The fundamental proposition which I'd  
like to put to you before we have a look at any more documents is really that – I  
mean, I've put it to you but I'll try again in a slightly different way. You agreed at  
the start that you had duties under the Corporations Act and duties under your  
employment terms to the company?--- Yes.

35 And what you're doing here is you're working as the CEO with the senior corporate  
council getting advice, which you've agreed is heavily focused on providing  
protection to the board in relation to the outcome of the negotiations that you  
yourself are having with them to try and get better benefits?--- Yes.

40 Now, you can see that that's a position that raises at least a potential conflict for you  
and for Ms Murray. That is, you're both advising the board how to protect itself.  
But you're also trying to benefit yourselves by getting as much as you possibly can  
without causing the board any difficulty?--- Well as I've said earlier, we certainly  
flagged with Norton Rose the matter of the board being able to comply with its – its  
requirements under the corps act. That was done earlier. In terms of the benefits for  
45 the staff, yes, we viewed ourselves as being in negotiations with the board on the  
matter.



5 But if Mr Bentley says he never saw the advice with these matters in it, and we don't have any documents that show that the draft advice ever went to anyone on the board. And we know that all those important things aren't in the final version. Then if Mr Bentley's telling the truth about that and it's true that the board never got notice of all those important matters that it needed to know for its own protection, then it looks like you and Ms Murray have been using your positions to filter the advice which the board is getting so as to favour your interests, and doing so in breach of your duties?--- No, I can't accept that. The - - -

10 Why not?--- Well, the proposition you're putting is that we've taken a course of action that is going to cause the board of Racing Queensland some grief. And that certainly wasn't our intention.

15 It's not a question of is going to. But what you're doing is you're removing warnings which Norton Rose proposes be given to the board about how they could avoid potential trouble down the track. All these warnings that they looked at about things they can do?--- If I could just emphasise, the view that I certainly had at the time is that, notwithstanding we'd flagged those considerations of the corps act with Norton Rose, was that Norton Rose was effectively acting on behalf of the four  
20 executives, advising in respect of what we could achieve in relation to an outcome as a part of the negotiations. Now what actually happened is that the final advice did go to the board, and the board subsequently sought a further opinion on that particular advice.

25 We'll get to that?--- Okay.

We'll get to that. But that doesn't change the proposition that I put to you that I would respectfully say you haven't answered, which is that there seems to be an inconsistency between your duty to the company and the removal of all of these  
30 important warnings that Norton Rose proposes be given to the board about the terms of your increased employment benefits. Do you agree that there's an inconsistency?--- I understand what you're saying.

35 Well, I just want to give you the chance to answer it as best as you can, because that may be a finding which is open to the Commissioner, ultimately, that you acted inconsistently with your duties by not ensuring that this material, or at least the fact that it had been removed, was brought to the attention of the board when there's such significant changes, all focused on the position of the board?--- Yep. Well, first of all, I've said before I'm not sure whether the chairman received this advice. I mean,  
40 I didn't follow that through with - - -

No, you don't know. But that's the point; isn't it?--- Well, it is.

45 That's what I'm getting at?--- It is. But I'm simply saying the fact that I can't say that the chairman had received this. I doubt it would've been circulated to the board. But in relation the proposition you put is that there was no intent on behalf of either myself or Ms Murray to have those matters withdrawn and not drawn to the attention

of the board. If that's occurred and if there hasn't been sufficient advice put before the board in respect of its obligations - - -

5 Whose fault is it?--- I beg your pardon?

Whose fault is it? Is that what you're going to get to? If that's occurred then whose fault is it? You're the two who are dealing with – you and Ms Murray are dealing with Norton Rose. You're the ones – you're the only ones having this communication directly with them in the correspondence we've got?--- Yes.

10 You're, as far as we know, the only ones who know about the changes. So who else is going to bring it to the attention of the board if its not you or Ms Murray?--- Well, the lawyers advising. You know, it - - -

15 But if you're telling them to take it out of the advice - - -?--- Well, no.

- - - and they think you're acting on behalf of the company?--- No, but what we've put back to the lawyers advising is a set of outcomes that we were looking to achieve. And I'm happy to – happy to state that quite openly, that we were looking for increased benefits over and above what were contained in the draft advice. There's no question about that.

And Norton Rose is saying in there draft, "Whoa, be careful" - - -?--- But - - -

25 - - - "because if you go too far, all these terrible things are going to happen."?--- But

And a lot of those terrible things you're chopping out?--- But equally, Norton Rose have the opportunity of saying look, this cannot be proceeded with. This is completely wrong. This places both you and the board at significant risk.

30 Sure. And if they didn't do so – what, you say that completely absolves you of any responsibility on your own part?--- No, not at all. But we're working with a law firm in respect of this advice. And we put to the law firm look, these are the outcomes that we want to pursue.

35 Yeah?--- And I would've thought then if there is such a significant risk for either the employees or for the board - - -

40 But you think they're just advising you, you keep saying, really. They're formally - - -?--- Absolutely, correct.

Yeah. So why are they going to tell the board?--- Sorry?

45 Why are they going to tell the board if they're really just advising you?--- Well, they've done so in the draft advice.

5 Yeah, and you've taken it out?--- But – well, there's no reason them for them to have similar provisions in their second advice. I mean, if there's – if the law firm was of the view that there were significant concerns in relation to what we, the executive, put back to them, I would've thought there'd be some responsibility on the law firm to be saying look, hang on. We know this is what you want, we know this is your wish list. We know you want to get all of these things out of these negotiations but you can't do it.

10 Okay. Can you turn to tab 47, please. Just to put it in context, the - - -

COMMISSIONER WHITE: Can I just ask you before you turn to the document, I'm interested to know who have the instructions to Norton Rose to delete those particular passages in the final advice.

15 MR PINCUS: Yes. Well, I think we're going to get - - -

COMMISSIONER WHITE: You're going to get to that?

20 MR PINCUS: I hope we're going to get to that, yes.

COMMISSIONER WHITE: All right, thank you.

MR PINCUS: I hope so.

25 COMMISSIONER WHITE: Thank you.

30 MR PINCUS: The context is, of course, that the advice has come on Friday the 15<sup>th</sup> of July. You've received it from Ms Murray on her – from her – sent from her iPhone sort of 7 o'clock on Friday night. You saw the emails - - -?--- That's at tab 47.

- - - in tab 46 in the second email we saw, do you remember - - -?--- Yes, yes. Yes, yes.

35 - - - that she forwarded on to you?--- Yes.

I can just see the time here, it's 6.53 pm on the Friday night you get it. Then on Sunday, if you look at tab 47?--- Yes.

40 At the top, you'll see Sunday the 17<sup>th</sup> of July. This is an email from you to the other three?--- Yes.

45 And you say, "Please see attached. Get the four of us together as soon as possible"?--- Yes.

"I propose we meet, discuss and then a couple of us meet with Norton Rose before the advice is settled. We may even meet with Bob before that, but we can discuss."

And just sticking with that for a second, you said that you had met with him at some stage before it was finalised?--- Yes.

5 And as I understood it, the essence of what you said was you didn't discuss with him any of the changes we've just been through?--- I don't recall discussing those with him.

10 You were discussing with him the essence of the benefits and the - - -?--- That's my recollection, yes.

- - - what you were getting. And then you say, "My initial thoughts are" – this is the first communication after getting that draft back. "One, don't like five year term." So I don't want my time to be extended; yes?--- I'm not saying I don't want my time to be extended. I'm saying I don't like a five year term.

15 Well, what does it mean?--- Well, it means I'd prefer a five year term less than a – I wouldn't prefer a five year term compared to a shorter term. But it doesn't – doesn't - - -

20 Yeah. Would you agree that it's consistent with what we've seen in a number of bits of other material, that you're not seeking a new deal which involves you staying more than the next six months or so. Your emphasis is on shortening the period that you'll stay rather than extending it?--- Shortening a five year term.

25 Okay?--- I'm saying here I don't like a five year term.

Okay. Point two, then. "Question performance bonus paid at halfway mark, five years is a long time." You're wanting performance bonus to be changed somehow. Point three, "Question the retention bonus."?--- Yep. And I'm saying that five years is a long time.

30 Sure?--- But I'm not saying that, you know, this – this has got to be a six month or its got to be a nine month. I'm saying that what seems to be – what seems to be in my thinking here is that I'm thinking that five years is a long – a long time.

35 And then point 4, "10 to 20 per cent seems light."?--- Yes.

You want more?--- Yes.

40 Yes. And that's despite, in relation to the advice we've just looked at in the draft, what seems to be pretty clear advice from Norton Rose that appropriate benefits that are not disproportionate and would be in the interests of RQL are between 10 and 20 per cent?--- Yes, that's right.

45 You want more?--- It seems to me that there are several items that at least I want to discuss with the – with the other executives.

Yes, okay. And then if you turn to the next page of that same tab, please. Again, early on the same morning, everyone's eagerly emailing Ms Murray replies to you. "Can we meet at 9.15 on Monday to discuss" with, it seems, the four of you?--- Yes. Yes, I see that.

5

There's no suggestion of Mr Bentley being involved in that. But we don't know on the face of that email?--- Yes.

Then on the next page, please. Can you see this is what seems to be an unsent email. It's got your name at the top, which I assume means its been printed by you?--- Yes.

10

Do you remember this document?--- I don't remember it but it will be mine.

And you are saying to Shara, "Key outcomes will be". And if you just read those, please?--- Yes. Yes.

15

And so the points to emphasise are 30 per cent, as we've looked at. Contract stays the same period?--- Yes.

And the trigger, including the change of government?--- Yes.

20

And at the top you'll see the handwritten note, which I understand is a note of Mr Proctor from Norton Rose?--- Yes.

Provide – or perhaps by his assistant?--- Ms Gamble?

25

Kirsty – Ms Gamble, yes?--- Yes.

And if you look at the next page, you'll see it's the same handwriting, I think. I mean, I'm not purporting to make you a handwriting expert. But it seems that she has recorded that that document's been handed over - - -?--- Yes.

30

- - - by Ms Murray at the meeting that then follows. And you'll see there's a Norton Rose meeting again on the Monday. It says that you, Ms Murray – you and Ms Murray attend with the Norton Rose solicitors. And at the top under that it says, "Met with chairman this morning."?--- Yes.

35

You've said already that you met with Mr Bentley. And do you think that's the meeting that you were referring to?--- It looks like it.

40

So you've received the draft on the Friday night. You've emailed on the Sunday morning to set up a meeting on the Monday. And on the Monday morning, you had the meeting, which is the four executives and Mr Bentley?--- It appears that way, yes.

45

Well, is that what happened? Do you remember?--- I can't recall. But my recollection though is that we certainly had discussed the outcomes with the chairman before we advanced them to Norton Rose.

5 Right. And so then you meet Norton Rose and the starting point is you say you've met with the chairman?--- Yes.

And Norton Rose, as you know, is writing letters of advice to the chairman?--- It's addressing them to the chairman, yes.

10

Yes. It's likely to think that you've discussed the matters that you're going to discuss with them with the chairman at your meeting with him that morning?--- It's a point I'm not sure of as to whether or not the chairman had that advice. I can't be 100 per cent on that at all.

15

Right. But did you tell Norton Rose that he didn't have the draft?--- I don't recall saying that, no.

Right. Do you think it's fair to say you probably didn't?--- I can't say.

20

Right. Do you agree that there – it looks like there'd be a risk that Norton Rose would think that you're there advancing a position which you've already discussed with the chairman?--- Yes, and the notes seem to reveal that we've had a discussion with the chairman.

25

Yes. And the position you're advancing, what you're asking for, you've already discussed with the chairman?---Yes.

30 Yes. Okay. And in some cases that's true, because if we look down below that 30 per cent increase, I think the essence of what you were saying in response to the Commissioner's question before is you were discussing those sorts of things, how much you'd get, so you had told him you wanted more than 10 to 20 per cent?---Yes.

35 Did you discuss the material adverse change provision with Mr Bentley? Do you remember?---My recollection is that the matters that appeared on the earlier note to Shara Murray from myself were those that we'd discussed with the chairman.

40 They're the ones you discussed. Okay. And so you'll see, if that's case, then that note doesn't include reference to – we're repeating, I think, old ground, but – any of the things which were in the draft, which we saw were important and were important?---That's right.

45 Do you know if you had any other meetings with the chairman between the draft advice and the final to discuss these matters?---I don't recall them, but the nature of the operation was that the chairman was in the office on a regular basis. He would be aware of what was occurring. I mean, this wasn't something that he would not – not have been aware of.

5 Do you mean by that that he would have been aware of the removal of all those things from the draft advice?---I don't know. I genuinely can't say whether we had put that in front in of the chairman and explained that – explained that with him. But the chairman was in the office on a regular basis, and it would be unlikely that we have not had a discussion on a regular basis with him in relation to this matter. It was a matter that he had an interest in, and it was a matter that we wanted resolved. So it – it would have been – and you can see by the timelines that we're moving quickly to have something in place, and it's not as if we saw the chairman once every four weeks or once every three weeks. We saw the chairman on a regular basis.

10 Yes. But you see that there's a big difference between you having told the chairman about all those things being removed, so that you've at least told someone, you told the chairman of the board, and not having told him, in terms of whether you met your obligations to the company in this process. You do see that?---I don't think I can advance that any more. I'm not aware as to whether or not we had stepped him through the draft advice. I'm not aware whether the chairman had received the draft advice.

20 And you didn't check?---I didn't check with Shara Murray, no.

COMMISSIONER WHITE: And physically, were your offices quite close to the office that the chairman occupied when he came to Deagon?---The chairman's office was directly between Shara Murray and Paul Brennan, and my office was adjacent to Paul Brennan.

25 So pretty close?---Directly between Shara Murray and Paul Brennan.

30 Thank you. And am I right in thinking Mr Orchard's office was in a different set of buildings?---It was on the same complex, but he would have been 150 metres away.

Thank you.

35 MR PINCUS: Just looking at that note, please, again, under tab 47, we've been through the top half of the first page. Then it records, "This is the outcome they would like to achieve." That seems to be recording, would you agree, the outcome which you and Ms Murray have advanced you would like to achieve?---Advanced on behalf of the executives, correct.

40 Yes. And then below that: "Trigger election result. Available to resign on the next morning, ie, Sunday"?---Yes.

That is, the Sunday after a Saturday election?---Yes.

45 And "Transition period. Would like to avoid this if possible"?---Yes.

So that seems a bit stronger than what you were saying to me before: that you were only really in your email on the Sunday questioning things like the performance

bonus and the retention bonus. In relation to the transition period, you're asking to get rid of it?---That's being advanced at that particular meeting. That's correct.

5 By you or Ms Murray, but on behalf of the four executives?---Yes. It's – we – as I say, we had met in relation to this, and that's something that's obviously come up as a result of the discussions with the – with the executives, and we put that forward.

And then, please, go to page 2, or to the bottom?---Of the diary note?

10 Yes. The same document?---Yes.

2.3(1). You'll see it says about four lines up - - -?---Yes.

- - - "Up to 30 per cent TRV increase"?---Yes.

15 Then "No performance bonus. No extended term. No deferred payments"?---Yes.

20 Now, if that's recording, as it seems likely, doesn't it, instruction that you'd given, then it records, again, not sort of question context that we saw in your previous email on the Sunday but more emphatic instructions that the performance bonus, the extended term and the deferred payments should be removed?---Yes.

25 Do you remember who it was that actually gave those instructions in this meeting out of you and Ms Murray?---Specifically, I don't recall who – who offered the instructions up, but at least in part, they seem to be in line with the email that I'd sent earlier.

30 Well, yes. But the difference, if you'd just turn back to that email, is – that's the first document under the same tab. You were saying to me – you were emphasising, I think, the word "question" in points 2 and 3?---Yes.

35 And that is, you just wanted to talk about it, if I understood the essence of your evidence a little while ago?---The items – the items listed there would be items put forward for discussion amongst the executives. That's correct.

Yes. Okay. And so you've had the discussion?---Yes.

And then you see Norton Rose?---Yes.

40 And it's changed from – what I'm showing is, I hope, something that changed from items for discussion to items for instruction - - -?---Yes.

- - - to Norton Rose. So how did that come about? Was it - - -?---It came about as a result of the discussion with the executives.

45 You all agreed that the matters you wanted to discuss, the things that you questioned in your email, should become instructions to Norton Rose?---I doubt – I doubt that



there would be anything that we would have put forward either via the chairman or to the chairman, subsequently to Norton Rose, that wasn't agreed by the four executives.

5 Okay. But you told me before that you didn't think you put anything to the chairman beyond the matters that are in the email, which is the previous page before the file note?---Yes.

10 And you'll see it doesn't include any reference to no performance bonus. It doesn't include any reference to no extended term, and it doesn't include any reference to no deferred payments. Sorry. It does include a reference to no extended term because it's got the contract date saying the same?---Yes.

15 But the other two points don't appear there?---Yes.

So you hadn't discussed those with the chairman if that's - - -?---We may or may not have.

20 Right. Well, it looks like you hadn't if what you said a minute ago is right: that the email reflects what you probably discussed with him. So again, you're requiring changes to matters which Norton Rose had set out in its draft advice for the benefit of the board - - -?---Yes.

25 - - - that you haven't discussed with Mr Bentley, as far as you can tell or recall?---I can't recall definitively. Correct.

Over the page, please, to page 3 of the file note?---Yes.

30 There's a reference to "trimming the current advice to deliver their outcomes". Now, again, of course, it's someone else's note, but because you were at this meeting, I'd like to know what you understand to be likely to be meant by those words. It could be read as suggesting that there's a concern that the current advice, with all those warnings to the board in it, might lead to some doubt about whether you'll achieve these wonderful outcomes and that therefore, all those warnings should be trimmed from the advice to make sure that the outcomes are delivered?---No. Look, that - we - we were not about - not about advising Norton Rose - Norton Rose to make adjustments to its draft advice to cause the - - -

40 You weren't?---- - - to cause the - to cause the board any grief. I mean, that's - that's simply not right. I can't - I can give you my view in relation to that. It would seem - - -

45 Yes, please?---It would seem that we simply want a - we want a concise set of outcomes contained in the - contained in the advice in relation to the matters that the executive have set out in my note to Shara Murray.

But, what, you're concerned that the board will have to read too much in order to get to the point? You just don't want them to have to read all those boring warnings about the risks they're taking?---No, that's not right at all.

5 Well, what is it, then?---You've asked me my view, and – and my view is that it's – it's a concise set of outcomes not dissimilar to those that I put in my note to Shara Murray, being reasonably prescriptive in respect of the outcomes that we're looking for. To draw a long bow and to suggest that I'm sitting there with a lawyer and saying look, drop all this stuff out because the board doesn't need to see all of this, I  
10 mean, that's – that's not right at all.

Well, what is the reason for dropping all the stuff out?---Well, I've just said to you – you're saying that relates to dropping all the stuff out. What I'm saying to you is that – you know, put – put in there a concise set of outcomes for the – for the executive  
15 which is more reflective of the note that I'd sent to Shara Murray in relation to some fairly concise outcomes that we're looking for.

Well, they're all the pro-executive outcomes, aren't they? They're the pro-executive points?---Yes.

20 “We want more money. We want to not have to stay so long”?---Yes, that's correct.

And those sorts of things?---That's correct.

25 The things that you're trimming are the things which are warnings to the board. We've been through that?---You're suggesting I'm – I'm – myself or Shara are telling Norton Rose to trim out the advices to the board.

Well, that's what actually happened – is that the advice was trimmed so that those  
30 warnings were removed. We've seen that. So, I mean, it doesn't really matter what these words mean. You're saying - - -?---But you'd raised – you'd – you'd raised them.

35 You're saying you definitely did not ask Norton Rose to trim the advice so as to remove the negative parts which might cause the board some alarm and to emphasise the positives?---We would not have provided that advice to Norton Rose. I mean, it's – it's – it's a fallacy to suggest that executives are going to be sitting there with a lawyer, telling the lawyer to drop out important stuff for the board. I mean - - -

40 Well, what was happening if that wasn't happening? You were telling them to drop it out, but for what reason if it wasn't - - -?---We – we weren't telling them to drop out that advice. I mean, I reject that completely.

45 What does it mean on the bottom of page 2? “No performance bonus. No deferred payments.” Who's telling them that? Are they telling themselves that?---But that's more – that's – that's more in keeping with the explanation that I provided to you that there's a concise set of outcomes that we're looking for in respect of the

provisions for the executive staff. So yeah, take out the performance bonuses. Take out those sorts of things. Leave in the very prescriptive benefits that we were seeking at the time. But there's nowhere there suggesting that we're telling them to take out the important advice to the board.

5

Well, what's not important about saying that you get a performance bonus and a deferred payment, which are consistent with what Norton Rose emphasises: that you will be paid for staying on?---But that's -- that's different to the proposition of saying that we're telling Norton Rose to take out important advice for the board. The - - -

10

But if Norton Rose's advice is you should defer payments so that these people are actually encouraged to stay rather than leave, you should give them incentives to stay, and you're taking that out, then that's important advice to the board you're taking out, isn't it?---It is, and it's around the -- it's around the benefits or otherwise in respect of the employee, but that -- that does not hit at the heart of what you were saying before: that we've trimmed -- we've asked Norton Rose to trim out of the advice the important parts for the board that they should have cognisance of. We did not do that at all.

15

20

So incentive bonus taken out -- it wasn't at all important for the board to know that Norton Rose's view was, at least initially, that if they were worried about keeping you they should give you an incentive bonus rather than a payout when you leave?---Norton Rose had put forward some draft advice -- a piece of draft advice. We had a look at it. We wanted to advance the proposition of a different suite of benefits and we advanced those to Norton Rose. And again, as I've mentioned earlier, Norton Rose in -- in providing its advice, in my view, should have -- should have -- should have had regard for those things that were important and - - -

25

30

Okay. Norton Rose is not here answering questions. It's you, so we're just - - -?---Yeah. Understand that. Okay.

35

We've heard your account of that. It's Norton Rose's fault, but we're just - - -?---I'm not saying it's Norton Rose's fault, but -- but Norton Rose must have some obligation in this as well.

40

Okay. Well, we get that point. You don't need to make it again. Can you look at the next point under "Incentive Bonus Taken Out". It refers to 2.3. It looks like it says, going down the numbers, 5 then 3 then 4. Do you agree with that?---This is on the second last page of the file note?

45

The third page. It's got number 3 in the bottom right-hand corner?---Yeah. Number 3. I've got it. Yep.

In the middle of that page there are some numbers: 2.3(5)?---Yes.

And then under that is 3 and under that is 4?---Yes.

And you'll see that 5 and 3, it just says "delete".

COMMISSIONER WHITE: It might be convenient if Mr Tuttle actually had - - -

5 MR PINCUS: Yes. I'm - - -

COMMISSIONER WHITE: - - - that document 47 perhaps in your hand, so that it makes a bit more sense?---Sure.

10 MR PINCUS: I think document 46 is the - - -

COMMISSIONER WHITE: I beg your pardon. 46 – yes.

15 MR PINCUS: And you'll see if you turn to the document – you don't even have to get it out, if you don't like. You can leave it in and just go back to it. We're talking about 2.3(5) and 2.3(3), so we can just look at those in – under tab 46. So remember this is the bit where it starts, "Our suggestion of appropriate benefits that are not disproportionate and would be in the interests of RQL is as follows"?---So this is – this is on page - - -

20

Page 2 of the draft advice?---Yeah. Yep. At point - - -

Point 2.3?---Yes. I've got it.

25 "Our suggestion of appropriate benefits that are not disproportionate and that would be in the interests of RQL is as follows"?---Yes.

And number 3, which is the first in order that we've noted in the draft – in the file note - - -?---Yes.

30

- - - is a notice period. We already looked at this having been removed, but the point is in your meeting with Norton Rose it's recorded that the instructions are "delete". Yes?---Yes.

35 Delete a notice period. And then next one is 5, I can tell you, and that's - - -?---Incentive bonuses.

- - - the incentive bonuses - - -?---Yep.

40 - - - which we've talked about. So that's "delete"?---Yep.

Then if you look at the final page, please, of the file note it refers to 2.4 – "re-craft" seems to be what it says. "Re-crafted info", and there's a bolstering of the bad press. There's a reference to Mark Oberhard; can you see that?---Yes.

45

And we looked at the change to 2.4 previously, and in essence what seems to have happened there is the addition of the words, "We consider that this will provide the

executives with the protection they are seeking in the current environment and satisfy RQLs desire to maintain the executives' employment." So there's been a sort of a bolstering of the general justification?---Okay.

5 If you can turn to tab 48, please. You got that?---Yes. I have. Yes.

Murray Procter: "Please see attached draft as requested. We've tracked our changes for your convenience. We also include a clean draft. Please let me know if you're ready for us to send the final version for you to provide to the board"?---Yes.

10

Again, it's all about giving it to the board. The changes are tracked and without going through them in detail, can you just have a look at them, please, and we'll touch on them, in the letter that's attached?---At 48?

15 This is only the track changed version?---48?

We're still under tab 48, so the second page is the track changed letter?---Yes.

20 Should be, I hope. And if you look over the page, page 2 – we'll just run through them quickly – you'll see 2.3(1), the 30 per cent?---Yes.

5 is deleted, the incentive bonuses in – whilst the new 4 – the change of state government is now included?---Yes.

25 So that must have been something you – that came out of the meeting?---Yes.

And – etcetera – 2.4 has the new bit we just referred to. That's been added?---Yes.

30 3.1 shows the risk of the smooth – the risk to smooth transition. If you go to 6.4 there's reference to – in the new bit, the underlined bit: "This is the most straightforward way to address the retention concerns. We discussed other options below," and there's an alternative. "If other retention options are implemented such as the incentive" - - -?---Could you give that number again. Six point – 6.4.

35 6.4?---Yes. Got you.

If you go to page 6 - - -?---Yeah. Got you. Got you.

6.4?---Yes.

40

There's some underlined words which are new. Are you with me?---Yes.

And the first thing that's new, obviously, is the change of 10 to 20 per cent to 30 per cent?---Yes.

45

Immediately after that there's a new sentence or two – or three, even: "This is the most straightforward way" etcetera. "We discussed other options below. If other

retention options are implemented such as the incentive plans, a lesser increase should be considered.” Now, I can tell you that doesn’t make its way to the final advice. Do you want me to show you that, or do you accept that that’s right?---No. I accept that. Yeah.

5

Okay. And so that’s again consistent with getting rid of the – while there are further retention options, you’re getting rid of the retention options, aren’t you?---Yes.

10 Okay. And then there’s the interests of RQL bit in 6.5 that’s been deleted. Can you see that? Immediately under where you were just looking?---Yes.

So there Was a reference to the interests of RQL about moderate increases but, of course, that’s gone?---Yes.

15 RQLs not being told what its interests are in relation to that part?---It seems to be consistent with the increase to 30 per cent.

Yeah?---Yep.

20 6.10 – again, if there’s going to be an incentive plan they could give you a more moderate increase?---Yes.

And if you just look at the changes in 6.1, the old 6.12 and the addition of the 6.12 and 6.13 – they’re all things I think we’ve talked about?---Yes.

25

Just note in 6.12 that there’s a reference to a notice period of 12 months?---Yes.

And over the page, please, at 6.20, of course, there’s the reference to the change – could include a change in state government?---Yes.

30

Now - - -

COMMISSIONER WHITE: Now Mr Tuttle, you explained the expression “trim the draft advice”?---Yes.

35

It wasn’t very trimmed, was it, if you just lost a page. You went from – what is it – eight pages to seven pages, something like that?---Yes.

40 You didn’t say to them, “Look, this is still too wordy. We want it sharpened up. Just deal really with the core demands of the executives”?---I don’t recall, Commissioner. Are you suggesting that – that they haven’t trimmed it a great deal in accordance with the suggestions that I’d made earlier?

45 In accordance with your evidence here that the possible meaning for “trim” might be “Let’s sharpen this up a bit” - - -?---Yes.

- - - “and just get down to what it is we’re really consulting you about”?---Okay.

So you don't think that you rejected that advice with the tracked changes on the grounds that it needed trimming further?---That it needed further trimming? I'm -- I'm not -- not 100 per cent sure, Commissioner. This is looking like the, you know  
---

5

Looks a bit like the same as the final advice, doesn't it?---It does. Yes.

All right. Thank you.

10 MR PINCUS: There a few more changes, Mr Tuttle, I think you'll find, which we'll see if you go to tab 49, please. If you can just see that there's -- the first two pages are two -- sorry. The first page is a Norton Rose file note- - -?---Yes.

15 - - - and dated 19<sup>th</sup> of July. Shara Murray has called with some further changes. She had said to Murray they were going to make tonight, particularly they as the executives?---Yes.

20 And so, if you just read the rest of it, it seems that Ms Gamble has made the changes as she talks to Ms Murray?---Yes.

25 And there's a tracked version attached. I don't think we have it, but, I mean, even -- it's not there, and it doesn't matter for present purposes. Then on the next page, not long afterwards, you'll see that that file note finished at 6.07 pm, and Ms Gamble is emailing Mr Procter and she refers to the call from Shara, and she attaches the track changed version?---Yes.

She said that if you were happy with the changes to [indistinct] in final form so they could take it to the board meeting tomorrow?---Yes, I see that.

30 And then the track changed version is over the page; another version of the letter, with some further changes?---Yes.

35 Now, I don't think any of the changes matter for present purposes. If we can just go past that letter to the next document, after the end of the letter under the same tab?---Yes.

You'll see there's an email from Mr Procter to Ms Murray?---Yes.

40 Again, the same day, later in the evening, "Sorry I missed you" et cetera, and he refers to the Ms Gamble draft and some further changes he's made. "Here it is in final draft with changes tracked for you look at in the morning."?---Yes.

45 And if you have a look at this, please, I think that the changes which have been recently made to this new version that weren't previously made are double underlined, and if you look at 6.4- - -?---Yes.

- - - he's included some new words. If you could just read those; and he says in 6.5, "Increasing to 30 per cent is the most straightforward way to address their retention concerns that would not constitute a breach", and we saw those words in the final version?---Yes.

5

And, of course, the incentive plans and the notice of termination bits are gone, as is under redundancy payments, 6.16. I think that was already gone, wasn't it, but- - -?---It's consistent, yep.

10 And then we just go on, please, to the next tab, which is 50, and, of course, I think we've been through this enough. This is the – if you have it out, can you insert it back in please, the final version of the advice, dated 20<sup>th</sup> of July? Now, I think either we should go past it – can we just pause for a moment? Not to look at the changes, but just to discuss this in context a little bit more. The letter does, doesn't it, as  
15 we've looked at already, contain quite a lot of reliance on your 5 July letter as indicating that you might leave early if your concerns are ignored, and that's the whole thrust of the board paper, and also it's emphasised in this document, the- - -?---The final advice?

20 - - - the final advice. I can find that reference for you if you like; hold on a second. 3.16 – 3.13 is the starting point: there's a reference to that?---Yes.

And then 3.16, "In our view, [indistinct] the executive indicates a real and apparent risk to RQL that it faces early terminations from the executives should their concerns  
25 be ignored, so measures should be put in place to ensure their retention." See that in 3.17?---Yes.

Now, the difficulty with this which I'd like you to try and help me with is you're the ones giving them all the instructions they've got?---Yes.

30

They've got your letter that you sent to the board saying you better pay us some more or we might leave. Did you tell them that you really were going to leave, or that you hadn't – whether you had or hadn't looked for other jobs- - -?---Norton Rose?

35

Yeah?---I don't believe I disclosed that to Norton Rose.

And so when they're saying quite emphatically there's a real and apparent risk to RQL that you'll leave did you think that you should be seeking to clarify with them  
40 that, actually, as far as you knew, none of the others had any other jobs to go to or had looked for other jobs, and neither had you?---No, I didn't. I thought that the letter of July 5 would have been an indication as to how we felt at the time, but I didn't disclose to Norton Rose that it was my intention to leave. I don't think Shara Murray did at all.

45

And if you look at 6.5 just as another example, there's another emphasis on taking into account the need to retain the executives. "We consider an increase to 30 per



cent would be reasonable.” It’s a foundation of their advice; is the need to retain you. The other side of which is – I hope you’d accept – the risk that you were leaving?---Yes.

5 And, now, you were at the stage earning – we saw in your original contract – \$300,000 a year?---Yes.

Or total remuneration value?---Correct.

10 And you’ve said you didn’t have another job offer, you hadn’t applied for any other jobs, you knew you would have this job, you thought, until at least the election, which you thought was at least six months away?---Yes.

All of those things are right? It wasn’t realistic to think that you really going to leave, was it? In the next six months? You’re going to leave a \$300,000 job in circumstances where you’ve got real difficulties with reputational damage in the industry, you’ve said, and where you haven’t looked for another job and you haven’t got another job, and the position is the same for all the others?---I can’t speak for all of the others, but the view I had at the time was that if I had left at stage it gave me some opportunity to secure potentially alternative employment in a sporting-related field, but I felt that the longer that I stayed on and if I continued to support the strategies of the board that my reputation would continue to diminish.

25 But you’ve been there for years, and you’ve been involved in what you say is all these unpopular things that had been done?---Yep.

You’re under such attack from the press that that’s a substantial driver for all of what’s going on?---Yes.

30 You’re compiling a folder of all of these things talking about how your heads are on the block?---Yes.

And so how much worse is it going to get in the next six months or so?---We weren’t to know - - -

35 It’s already pretty bad, isn’t it?---Well, we weren’t to know, and it was certainly of concern to us. The - - -

40 It just looks like a confection that you really are going to leave, that it’s convenient for you to be telling the board we’re going to leave, but, actually, you’re not. It’s really made up to try and provide justification for getting a payout and then the government changes as anticipated?---Look, I can’t speak for the other executives.

45 Well, what about for you?---Yeah, look, I expressed to the chairman that I didn’t see any value hanging around. I had said that to Bob Bentley, that – and I hadn’t started looking, and nor would I start looking before I spoke to my chairman about that. Now, the chairman could quite simply have said look, that’s fine. We understand

that. Stay for as long as you possibly can, get out there and start to pursue a career in some other area, but he was obviously – he had some interest in retaining my services and services of others. It wasn't me that suggested that these four ought to be the individual people. The identification of those people came from the chairman.

5

Mr Bentley: you've said that, yes?---Yep, and the chairman at any stage could have said look Mal, I understand all of that. Good luck, get out there and get stuck to it.

But you'd bring in a letter which you agreed was intended to and did carry the clear implication that you were going to leave?---And the chairman requested that.

10

Yes, but you agreed when I asked you about this earlier as I recall it that you didn't ever have a discussion with him about whether you were really going to leave. It was just that that was what the letter said?---I had said earlier that I had spoken to the chairman and outlined to him that I was disinclined to stay on. I didn't say to the chairman I'm out there actively looking for a job, I'm leaving tomorrow. I didn't say that.

15

But you wouldn't have left before you got a job, would you, because you were going to get nothing on resigning; we've been through that in the contract?---Yes.

20

And the alternative was staying on and continuing to earn \$300,000 a year for up to about a year from this point?---And from my position the right thing to do was to engage the chairman, explain to him how I felt at the time in respect of staying on or otherwise, and I did that.

25

In your first statement, which we can go to if you like. But I'll just tell you it says in paragraph 39 something to the effect that your fears from 2011 proved well founded when you did eventually resign?--- Yes.

30

And the fears presumably were difficulty obtaining employment when you left RQL?--- Correct.

35

And so when you did leave in March of 2012?--- Yes.

You had difficulty getting employment?--- Yes.

40

And it's true to say, isn't it, that you were in pretty much the same position – not an entirely different position back in July of 2011. Your fears from 2011 proved well founded?--- Yes.

Meaning you felt the same way then?--- Yes.

45

Right. Can you turn to the next tab, please, 51. You should have a board paper there; you've got that?--- Yes, I have.

And if you look at the bottom, it's originated Bob Bentley. Meeting date, 20 July 2011?--- Yes.

5 It seems generally to be a later version of the board paper we looked at earlier?--- Yes.

And much of it, you'll see, if very familiar if you just flick through the first 10 pages or so?--- Yes.

10 If you get to page 11, please?--- Yes.

Can you see in the third paragraph under the box there it commences, "Clearly the landscape has changed."?--- Yes.

15 Can you just read that, please?--- Yes.

And it says those executives that are most at risk are also those that will play a vital role over the next six months. And what were you at risk of, please?--- Look, I'd suggest that would be at risk of – potentially at risk of being removed, subsequent to an election. I'm assuming.

20

You're at risk of being removed after the election?--- I'm assuming that that's what it means.

25 So the election is not anticipated to be for another six months or so, that's the general thrust of the material we've been looking at?--- Yes.

And so what they're seeking to do is because you're at risk of being removed after the election, they're trying to make sure you stay for six months, until the election.

30 Is that - - -?--- That's what it seems.

- - - the essence of it?--- That's what it seems to indicate.

35 And what's hoped is to provide certainty prior to the election, again it's the same point; isn't it? The emphasis that this paper is sending to the board is that you'll leave in the next six months. That is, before the election, if they don't give you what you want. Increased benefits of some kind?--- I'm not 100 per cent sure of the thinking behind those words.

40 Well, you told us that you were involved in the drafting of the earlier board paper. I don't want to have another objection from Mr Wilson. I'm assuming, I should have asked first, that you were also involved in the preparation of this amended version of the board paper?--- I would expect that would be the case. As I've said earlier, I'm not a typist and a lot of this material looks as though it's simply been reproduced.

45 It'd be somebody that's got the capacity to move that – move that material from one document into another. But I may well have had input into it. If you were asking me whether or not they are my specific words, I don't recall.

Now, then it's my recommendations in relation to the four executives. And the recommendations are set out from the bottom of page 11 over to page 12. "30 per cent increase, change of government trigger" - - - ?--- Yes.

5 - - - and other things. Now, I put to you earlier and I'll just do it again in the context of this further version. You say it's not true that this was really what you were seeking. Rather, these are – this is what Mr Bentley is proposing?--- Yes.

10 But you agree, don't you, that we've been through your meetings with Norton Rose and they're things which you're putting forward to them. And in fact, you had proposed the 30 per cent before you met with Mr Bentley. We saw that; didn't we?--- Yes.

15 So at least to that extent you might have got Mr Bentley to agree that you could propose 30 per cent. But the 30 per cent was really your and/or the other executives' idea, not his; is that right?--- Yes, I put that forward.

20 Right. And so what, do you say to an extent it's true that these aren't really his recommendations? It's just slightly unusual wording, "My recommendations are as follows:"?--- Well, not so far as it's – it's the chairman's – it's the chairman's board paper.

It's the chairman's board paper, but he's recommending what you want?--- Yes.

25 And pretty much everything that you want?--- Yes.

30 30 per cent, the trigger. And then over, you'll see, on page 12, "In summary, the general effect". It's really just a reference, noting that the reference is again to the protection, the desire to maintain employment. And in the next paragraph, you'll see in the second last line, the reference to the work ahead of them in the short term. Again, it's consistent with not seeking to retain you beyond the election - - -?--- Yes.

35 - - - with that. And over on page 15, can we just note please under the heading "Attachments" in the middle of that page?--- Yes.

Attachment 1 is the letter of 5 July. Attachment 3 is the Norton Rose advice. And there's no reference to any other material from Norton Rose; that is, the draft?--- Yes.

40 And you agree that it seems likely that the board didn't have regard to the material that was in the draft and removed?--- I'm unaware that the board received the initial draft.

45 As far as you know, they didn't?--- Sorry?

As far as you know, they didn't receive it?--- I'm not aware whether they did or didn't. I would be surprised if they did but I'm unaware.

Or otherwise any notice of the things that had been removed from that draft?--- Yes.

And then we see the recommendations repeated, and it's signed "Mr Bentley". Can we turn over after the end of that document but under the same tab, please, to the  
5 next thing which is the board minutes that the paper we've just been looking at was prepared for, 20 July?--- Yes.

Now, you were at that meeting. Can you see that?--- Yes.

10 And if you look down under 2.1 on the first page, please - - -?---Yes.

- - - "Senior Executive Staff: The board discussed in-camera" – does that mean that you weren't there for that part of the meeting? Do you remember?---That's what it would suggest. Yes.

15 That's what those words normally mean where they appear?---Yes.

Do you remember if you were at this meeting where the board discussed the papers which we've seen were the 5 July letter and the Norton Rose advice, among other  
20 things?---It doesn't appear as though I am.

And had you said to anyone, "Maybe you should have us there so we can explain the process by which that letter which is attached to the board paper came to be and what's not in it anymore"?---I – I don't recall having the – having the discussion. If  
25 the discussion was had it would've been with the chairman only.

Do you mean you might have said to the chairman, "You better tell them about the changes to the Norton Rose advice"?---I may well have. It would be unlikely that a  
30 board – board paper would be prepared for – or with the chairman, and that in the absence of the chairman being briefed that he would advance that board paper in isolation. The – the normal process is that if another person prepares a – the process was if another person prepares or contributes significantly to a board paper to go forward under the hand of the chairman, the chairman is fully briefed in relation to that before it's advanced so as to ensure that the chairman is able to speak in detail  
35 and with confidence in relation to that board paper. That would be the normal process for a board paper that was being advanced by the chairman.

So if we have to choose between Mr Bentley himself knowing about the removal of those important things from the draft advice – or at least the essence of them – and  
40 not telling the board and Mr Bentley not knowing because you didn't tell him, which choice should we make, do you think?---It's impossible for me to say, but the - - -

Well, except that you were there and it's not that long ago. It's the middle of 2011?---I – look, I – I – I genuinely don't recall. If I did I'd – I'd be advising you,  
45 but if - - -

It's awkward, isn't it, because you've got a choice sort of between putting Mr Bentley in it by saying he knew all about it and he didn't tell the board or - - -?---No.

5 - - - putting yourself in it by saying, "No. I didn't tell him and I should have"?---No. Look – look, all I can talk to is the way that the office normally operated, with the chairman being in the office on a regular basis and - - -

But all of that sounds like you're saying he probably did know - - -

10 COMMISSIONER WHITE: I think Mr Tuttle just needs to elaborate a bit more, Mr Pincus.

MR PINCUS: Thank you, Commissioner.

15 WITNESS: It would be unusual of – for an item such as – as this or any other of a significant nature, if you like – but in relation to these sorts of things, if we're advancing or if we're contributing to a board paper, that the chairman would turn up cold and, you know, purport to be able to provide some background to a board paper that he hasn't been involved in, that – that would not be the – that would not be the –  
20 the normal way that we would operate. In normal circumstances the chairman would be briefed. If he's going to talk to a board paper in the absence of having the executive there, he would understand the background detail. That would be the normal course of events. I - - -

25 MR PINCUS: And using this as an example, would the background detail include in that normal course of events that you'd been through a process where you received a draft advice with warnings to the board that were removed?---It – it may well, but I cannot say that I stepped him through that detail. Whether Shara has done that or not I don't know, but what I can say is that the chairman would not advance something  
30 without having the background detail to it in the normal course.

COMMISSIONER WHITE: I think that's about as far as we can go with that issue, Mr Pincus.

35 MR PINCUS: Sadly, Commissioner, that seems to be true.

So if we just leave that minute, please, and – noting only that "The board noted the advice from Norton Rose and unanimously supported the intent of the advice received." And it says that Clayton Utz should be asked to review Norton Rose's  
40 advice. Sorry. I probably lost you of where I am. It's two pages from the end of tab 51. Are you there? It's the minute of the 20<sup>th</sup> of July?---Yes. Yes.

I did tell you to move away from it, so I apologise for that. Under 2.1, three  
45 paragraphs down – if you just read that, please?---Yes.

Now, Clayton Utz is being asked to review the Norton Rose advice, but you note that the Norton Rose advice is only the trimmed down version, obviously?---The final advice. Yes.

5 Yes. And that that's the basis on which the board is making its decision to do anything - - -?---Yes.

- - - is the final advice, and they're deciding that Clayton Utz should review that advice?---Yes.

10

Yeah. 52, please. Just read that email, please?---Yes.

Have you seen this before?---No.

15 Did you know that Ms Murray had asked Norton Rose to prepare, as at the 28<sup>th</sup> of July 2011, draft termination – resignation letters?---Yeah. I – I believe Ms Murray advised me after she'd asked for the letters to be prepared.

20 You agree it looks consistent with the idea that none of you were intending to do anything other than leave as soon as the trigger event occurred?---Look, I'm – I'm unsure what was in Ms Murray's mind at the time, but I can recall Ms Murray advising that she had done this and I – I thought it was unusual. I've been around long enough to be able to put three or four sentences together if I was going to resign. I wouldn't require a lawyer to prepare a resignation letter for me.

25

Your intention was, though, by this time that if the newly amended employments contracts which were proposed got through and the government changed, you would leave?---From a personal point of view - - -

30 Yes?--- - - - I wanted to be in a position where I could determine my course of action if that – if that occurred. It was more likely in my - - -

It was much more likely, wasn't it, because you had - - -?---Sorry?

35 It was much more likely, wasn't it, because you had a choice of a big payout and a – effectively, a redundancy period with a big payout - - -?---Yes.

- - - or staying in this industry which you've said was poison - - -?---Yes.

40 - - - and where it would've just been untenable for you to stay on - - -?---Yeah.

- - - and where you would face a risk of - - -?---Yes.

45 - - - all sorts of things happening every – as every day went past?---And my concern equally with the – with the trigger is that from my point of view I would be able to determine my own destiny and not rely on a change of company or a change of board or a change of directors, because strange things can happen if you are reliant on those

things – those things to occur. There can be a – a level of – level of retribution meted out. But – but certainly I wanted to be in a position where I could make that determination.

5 Yeah. So do you agree or not agree with the proposition that it was your intention by July along with, it seems, Ms Murray’s intention – but your intention to leave if the government changed?---It wasn’t my intention. What I – what I required out of this process was to be in a – to be in a position that if I stayed on with Racing Queensland Limited, I could make a determination myself at a particular point in time. If the  
10 LNP were successful in winning government and I was of a mind to at that stage – to move on, I was able to do that. And – and when I’d been able to achieve that outcome, the decision in respect of whether I left or not was something that didn’t bother me. But my concern was that if there was a change of government and the only trigger that we had in place looking forward was a change to the board, that  
15 there would be a – a period of time where it would provide a government that may well have been hostile towards us or, you know, any other – any other matter could occur that would metre out – metre out a level of retribution at that time.

20 COMMISSIONER WHITE: What did you mean by “retribution”? It does sound very fierce, Mr Tuttle. What - - -?---I’m sorry, Commissioner?

What did you think they might do to you if it took them, as it was likely to do – take some months for the new – any new control body to come in or a change of board? It might take at least two or three months to do that. What did you mean when you  
25 were saying they might measure out retribution to you?---Metre out? Look, perhaps the best example I can provide to the commission is actually something that forms part of this – part of this commission, and it’s how things can occur. And I referred to a Deloitte report that my supplementary statement deals with, and the Deloitte report is in – was into the activities of Brennan and Tuttle, or Brennan and myself, in  
30 respect of signing invoices.

Correct?---The interesting thing with the Deloitte report is that the clear instructions to Deloitte were not to speak with either Paul Brennan or myself in compiling their report. They have moved on and – and done that, and my supplementary statement  
35 refutes the allegations against me in that report. In the report itself it says that it appears as though I’ve been in breach of a – a delegation. In the key findings it says that I was in breach of a – a key finding. But appended to my supplementary statement is a piece of correspondence from Contour that went out to a range of people at the time: Racing Queensland Limited, Deloitte, the government, The  
40 Australian, The Courier-Mail and a range of – range of other entities. And Contour was at pains to point out that it hadn’t received works of 158 million and – and it didn’t receive 20 million from the – from the state government in the dying days of the – of the previous government, amongst a range of other things. But equally in the many tens of thousands of documents that I’ve been trying to work through, I  
45 came across an email, and it’s of interest in that it’s an email from the current chairman of Racing Queensland Limited to then the acting CEO of Racing Queensland Limited. And the interesting thing is that Deloitte seemingly has taken



5 account of the Contour correspondence in making amendments to its – one of its final draft reports, but clearly the instruction from the – the chairman of Racing Queensland Limited to the acting CEO is to – look, Deloitte wasn't told to take any notice of the – of the Contour letter, so forget the facts. Restate the report the way it was, and that email finishes with something along the lines of if Deloitte are unwilling to do that, I'll report them to the government. And the flow-on from that email is that the – the CEO or the acting CEO of Racing Queensland Limited said yep. I'll meet with – I'll meet with Deloitte. We'll sort all of that out, and by the way is there any further feedback from the minister's office? And it seems unusual to me that if there's going to be an independent report in relation to the activities of a couple of people, that at some stage early on they'd be given the opportunity to put their case. And that wasn't – wasn't what occurred with this November 2012 report from Deloitte.

15 I understand. I understand?---And that's the sort of thing that – that can occur - - -

Right?--- - - - from time to time, Commissioner.

20 Yes. Total lack of fairness?---It would appear so in this instance.

Thank you. I understand.

25 MR PINCUS: Could you turn to tab 53, please, Mr Tuttle. Can you just read that whole email, please?---Yes. I've read that.

And if you just look over at the attachment, if you can just remind yourself – is it fair to say you've seen the email and the attachment before?---Would you like me to read all of the attachment or - - -

30 No. If you could just flick through it and try – tell me whether you're able to say it's familiar to you or not, please?---Sorry? Whether it's a - - -

Whether you saw it at the time?---I don't recollect seeing this.

35 Did you know that – you mentioned earlier that Clayton Utz had been asked to give some advice?---Yes. The - - -

You knew that had happened?---The intention was to, I think, bring Norton Rose and Clayton Utz together.

40 Right. Did you not ever find out what Clayton Utz had said in relation to Norton Rose's advice?---I – I would've at some stage. I don't recall this – I don't recall this advice.

45 Can you just note, please, in the email – and this reflects the contents of the letter itself?--- Yes.

In the second dot point, about three lines from the end of that dot point?--- Yes.

5 There's reference to a cap to mitigate risk. And can I just ask you as a general proposition whether you agree that it would've been helpful for Clayton Utz to know what Norton Rose had advised before all those things were chopped out of it if they were going to give a second opinion on - - -?--- I accept that.

- - - Norton Rose's position. You agree with that?--- Yes.

10 Do you know whether any changes resulted from Clayton Utz's response to Norton Rose's advice?--- I'm aware there was a further letter from Norton Rose that was - - -

15 Yeah, we'll get to that?--- I'm sorry?

We'll get to that. We can look at that, if you like, next. If you just turn to the next tab, please, 54?--- Yes.

20 Ms Warwick – I'm not sure that's the right pronunciation. And on behalf of Mr Procter is writing to Ms Murray, attaching a letter?--- Yes.

And this is, as you'll see, the response. And if you can – it's only two and a bit pages. If you can just read that, please. Not every - - -?--- Okay, this is a - - -

25 Not every bit if you like. But just remind yourself of this letter?--- Yes.

You've seen this before?--- I may well have seen this, yes.

30 So you'll see under further instructions 1.1?--- Yes.

Mr Bentley has requested – now, he's the same person who's the addressee of the previous advice. And he's the same person who's the addressee of the Clayton Utz advice?--- Yes.

35 Mr Bentley is the chairman of QRL. Norton Rose is saying, "You've requested a response to the following concerns raised by Clayton Utz. An early state election might have the effect that the termination payments under the proposed material adverse change clause are unreasonable."?--- Yes.

40 "And a change in the state government alone may not be sufficient to act as a trigger in relation to a material adverse change clause."?--- Yes.

45 Now, they go on to provide their advice. And you'll see just from the summary they think that the – in 2.1, the early election trigger is defensible because of the need to retain - - -?--- Yes.

- - - the executives. And two, for this reason it's in the interests to reach an agreement which will lead you to be retained?--- Yes.

5 Again, it's premised on the idea that if they don't do that, you'll leave - - -?--- Yes.

- - - before the election; yes?--- Yes. I'm not sure that I briefed Norton Rose in respect of this [indistinct] .

10 Are you sure that you didn't?--- I don't believe I briefed Norton Rose in relation to this matter.

15 And you'll be able to see on the face of the letter, though, that there's no reference to them having provided a draft advice which included aspects of notes of caution to the board in relation to the proposed changes?--- Yes, this appears to be in response – directly to the Clayton Utz - - -

Yes?--- Opinion.

20 But they haven't referred to the concerns that they previously raised, which didn't make it into their final advice - - -?--- Yes.

- - - of the 20<sup>th</sup> of July. At 55 – tab 55, please?--- Yes.

25 You'll see this is an email of the 3<sup>rd</sup> of August from Ms Gamble of Norton Rose to Ms Murray, copying Mr Procter?--- Yes.

And if you just read the introduction about what's attached, please?--- Yes. Yes.

30 And the changes that have been made: amended employment agreements, draft letters of resignation. Now, presumably by this point you know that there are draft letters of resignation already prepared?--- Yes, I believe Shara told me that she'd requested that.

35 I should put it to you that it's been said by Ms Murray in a different forum that you told her to get the draft letters of resignation prepared?--- I'd reject that – reject that completely.

40 Okay. At 5.1 of the draft which follows the letter, you'll see this is your – the amended draft offer of employment to you. You with me?--- Yes.

And if you go to 5.1 of that offer, which is on page – I don't think there's page numbers, I'm sorry?--- That's okay. It's a remuneration.

45 It's the third page, I think. Remuneration, exactly?--- Yes, I've got that.

Just a note that the TRV goes up \$90,000; that's 30 per cent?--- Yes.

And over at 15.2, when a material adverse change happens, you can give one months notice. You see one month in the second line?--- Yes.

5 And then there's a reference to the material adverse change, which again somewhat curiously doesn't seem to have the change of government. It doesn't really matter either way, but I just noticed that it's a slight curiosity given that it's come up a few times?--- So was this a draft that was - - -

10 This is a draft amended version of an employment agreement - - - ?--- Yes.

- - - produced by Norton Rose following the exchange of correspondence with the two solicitors, expressing their views following their original advice?--- Yes.

15 That's been resolved, it seems, and there's this draft employment agreement coming out as a result?--- Yes.

20 And so at 15.2, we've got the change of the notice and then the material adverse change. But it somehow doesn't include – I assume it's just an oversight – the change of government?--- So it's inconsistent with the – at least the advice we had at that time.

Seems to have been inconsistent with the final advice and the board paper, which had by that stage adopted the change of government?--- Yes.

25 And then can you go to 56, please?--- Yes.

30 So just recapping, the draft employment agreement was provided on the 3<sup>rd</sup> of August at 4.33 pm. Here we are shortly afterwards. Mr Gamble with Norton Rose is recording a phone call from Ms Murray?--- Yes.

And the executives want to take out the one month notice?--- This is after it's been to the board?

35 No, no?--- Sorry.

It's been provided to Ms Murray at 4.33 pm?--- Yes.

40 As far as I know, it hasn't been to the board between 4.33 pm and 4.40 pm when this conversation was happening?--- Yes.

And the executives are recorded as being the ones asking for the change. They want to take out the one month notice period?--- Yes.

45 Did you know that that request was to be made by Ms Murray or was made?--- I don't recall it specifically - instructing Shara to do this, if that's what you're asking, no.

Well - - -

COMMISSIONER WHITE: Or even discussing it with her?--- I don't recall it, Commissioner. So - - -

5

I suppose it would have to be a quick dash between offices; wouldn't it?--- We were all in one quadrant, yes, as I mentioned earlier.

Still, it's working – there's not many minutes?--- Sorry? There's - - -

10

I think there's not many minutes between 4.33 and 4.40?--- No.

MR PINCUS: Do you think you'd discussed it before that? That the notice period – a month would be - - -?--- We - - -

15

- - - too long?--- We certainly had some concerns about what might occur. I've mentioned the potential retribution earlier. I don't specifically recall having a conversation about shortening the notice period.

20

Right. You can't say that you didn't, but you don't remember it?---I don't. I wouldn't – I couldn't see that there would be necessarily a need to reduce the – reduce the period.

25

Did Ms Murray tell you that Ms Gamble had said that she had some concerns and would check with Murray about taking the one-month notice out?---I genuinely don't recall.

Okay. If you'd look at the next page, please. Again, there's another call, Ms Gamble this time calling Ms Murray after talking to Mr Procter?---Yes.

30

And if you just read the middle paragraph, please?---Yes.

And again, do you say you just don't remember any discussions about shortening the notice period?---I don't recall discussing this with Shara – about truncating a notice period.

35

She's asking you for a week?---Yes, I see that.

Then 57, please. You'll see here this is Ms Gamble writing to Mr Murray again, copying Mr Procter, attaching a further amended version, this time including, as the email says, a seven-day notice period?---Yes.

40

And that's reflected in the document where you get to 15.2?---Yes.

45

So that's changed from a month to seven days?---Yes.

Did you get this document?---I may have.

It's likely, isn't it, that Ms Murray would have sent you both the previous draft and this draft?---Yes, I'd accept that.

And then if you turn to 58, please?---Yes.

5

Same email chain, sender and recipient, but Mr Procter not copied, I don't think. In any event, it says, "We refer to our discussion earlier today and confirm the board's instructions to amend the relevant executive employment contract to include the option for the chairman of the board to waive the requirement for the executive to provide seven days notice." So if that's right, it seems that she is telling Ms Gamble – Ms Murray is telling Ms Gamble that the board has instructed that the contract be amended to not only keep the shortened seven-day period of notice but also to allow the chairman to waive it?---That's what the email says.

15 Yes. Do you remember a discussion about that?---I don't. Nothing in particular, no.

Do you say that you never knew that was happening?---I simply don't recall the detail of this. I don't recall being copied in or necessarily seeing it or becoming aware of it. This – this seems to be – seems to be that Shara is confirming a board instruction.

20

Yes. It's pretty important, though, isn't it, because you've been talking about how there's the risk of retribution and your concern if the new board comes in and what might happen. You might be denied your benefits and all those sorts of things we've seen in the previous material?---Yes.

25

And so it's pretty important that you don't have to give a month's notice or any other period. You want to give as short a notice as possible, don't you, to avoid that sort of retribution? You must have been aware of that issue around this time?---I'm not – I'm not certain of that, because if we had the – we have the protection of an option in respect of a trigger of the change of government. I think that provided the – that level of certainty that – that we were – we were seeking.

30

But you remember we looked earlier – and we can go back and find it if you need to, but – at documents that talked about the risk that you would be denied benefits by a new board even if you were entitled to them under your employment contract?---Yes, yes.

35

That was a concern in your mind. You didn't want to hang around?---Yes.

40

And we also looked at file notes where you'd talked to Norton Rose about leaving on the Sunday. Do you remember? Election on Saturday. Leave on the Sunday?---Yes.

You want to get out of there as soon as possible?---Yes.

45

You don't want to have to be stuck during this notice period, facing retribution or them denying your rights under the contract?---Yes, I understand that. We've been through those documents, yes.

5 Yes. So you agree, don't you, that your interest was very much in having a short notice period? And you've also agreed it would be surprising if these things weren't sent to you by Ms Reid?---Or, well, potentially handed to me. It doesn't look as though I've had this – this sent to me. But I accept that.

10 Again, I should put to you that Ms Murray or Reid has said elsewhere that Mr Bentley instructed her to – Norton Rose to include the waiver provision. And she's also given a different version: that dispensing with notice was your suggestion. You say it wasn't your suggestion?---I don't believe it was. The – Shara's – this has been prepared at the time, and it seems to suggest that it's a board instruction, but  
15 I'm only reading what everyone else can read.

Yes. Well, you say you don't remember whether there was any board instruction?

COMMISSIONER WHITE: As the CEO, Mr Tuttle, would you be aware of a  
20 flying minute going out or some notice to all board members in order to enable that statement to be made at that time? There was a board meeting due the next day, of course, the 5<sup>th</sup> of August?---Not necessarily, Commissioner. A lot of the – a lot of the flying resolutions or flying minutes were prepared by corporate counsel, and that will be a matter of record as to how they were transmitted to – to the board. If it was  
25 an item that, for example, I was managing, I would potentially prepare the body of the flying resolution or the flying minute, and that would be provided to Shara Murray, who would then send the flying minute out, but it wouldn't necessarily be a convention that I would be aware of every flying resolution that went to the board.

30 Right. Was it ever the case that sometimes something might just be done by a telephone call rather than even putting it into written form so that it could be faxed or emailed?---In terms of a board resolution? Be unlikely.

All right. Thank you. Or even – what about board information?---Yes, certainly, if  
35 there was - for example, if I was working on a – on a project with Michael Lambert, for example, on Palm Meadows, there would be a number of occasions where I'd be speaking with Michael about how we were progressing that particular project and providing him information that may not necessarily have gone to the broader board, and that would then normally form part of a board report that went to the next board  
40 meeting. So there would be some occasions where there would be a need for individual executives to talk to particular board members without necessarily engaging the whole board.

All right. Yes. Thank you. It wasn't quite what I was intending to convey, because  
45 we don't have any records of a flying minute formulated in any way that's in recorded form, so far as I'm aware, but if a telephone call were made to the other board members by the chair, for example, there would be no record of that, I take

it?---Sorry. I'd address that in respect of the – an executive dealing with the – dealing with the board. It would be highly unlikely that an executive would seek some sort of a resolution from the board by making telephone calls.

5 Of course. Highly unlikely?---Yes.

All right, thank you. Yes?

10 MR PINCUS: Yes, and just on that point, you'll see if you look at tab 57, the first document, that the draft last provided by Norton Rose was on Wednesday the 3<sup>rd</sup> of August at 5.07 pm?---Yes.

15 And Ms Gamble's email confirmed that by 10.30 on the following day Ms Murray has told her that the board had provided these instructions?---Okay.

20 So do you have any comment about the way in which the board might have provided those instructions? It seems it could only have been informally?---Again, it would be unusual for an executive to ring each director to seek a resolution. It would be highly unlikely in fact.

25 Right, and so what does that leave us with as the options for this? The solicitor's got it wrong, misunderstood, or Ms Murray has said there was board instructions and they weren't board instructions?---She may have spoken to the chair, who had confirmed the position of the board, potentially.

30 Would the chair be able to confirm the position of the board within that very short time frame without having some sort of meeting?---The chair over time would have taken decisions himself and then subsequently informed the board. I'm not saying that was commonplace, but that's something that will have occurred over the relevant period. I'm not saying it necessarily occurred in this respect, but that could occur where the chairman would give an instruction or an approval and then subsequently have that confirmed.

35 Did you have any experiences with Ms Murray of her doing something purportedly with board instructions when she just made it up?---No, I haven't. Ms Murray along with a number of the executives interacted on a regular basis with the chairman on various matters, but - - -

40 The likely – the most likely scenario is that she had at least spoken to Mr Bentley about this?---I believe that's fair. I don't believe Shara would represent a position of the board unless that position had been identified by the board, but as I said earlier it could have been the case that the chairman may commit a board's position on a particular matter and then subsequently have that confirmed. That will have occurred over the relevant period.

45 I understand. As I say, it's a sort of a retrospective ratification of something he's done?---Yes.



Then if we can then go, please, to 15.2 of the document that followed that email, you'll just see that the change that's been discussed in the email has been made?---Yes.

5 And, really, there aren't many changes to the pre-existing form of the document if you flick through it?---Yes.

And 15.2 is the guts of it, the material adverse change thing, and there's been a couple of new lines added which have reduced the period of notice and allowed that to be waived?---Yes.

And you say you didn't know that was – that had happened?---I don't have a recollection of it occurring.

15 Could you go to 59, please, or paper number 2.5 for a meeting of the 5<sup>th</sup> of August, again under the originator said to be Mr Bentley at the bottom?---Yes.

And turn to the next page, please. You'll see point 2, Variation to Employment Contracts?---Yes.

20 The proposition is that the variations occur, and you'll see the points at 1 to 6, and "Please see attached legal advice: attachment A."?---Yes.

And if you turn over the page, you'll see that's just the 20 July Norton Rose advice again?---Yes.

The attachment over and at the top there, and there's also the Clayton Utz advice that follows, plus Norton Rose's response on the 3<sup>rd</sup> of August?---Yes.

30 Now, forget about the redundancy policy; you can just skip over that please. So at a few more pages through you'll see the board meeting of the 5<sup>th</sup> of August to which the paper relates?---Is it still under 58?

35 Still under the – 59, yeah, it's the last complete document under that tab, about five pages back from the end?---Yes, this is the minutes.

Yes, and you're there. So is Ms Murray?---Yes.

40 And if you turn over please to 2.5- - -?---Yes.

- - - I'm sorry, underneath that on the next page. Again, look at point 2, Variations of Employment Contracts?---Yes.

45 "The board confirmed they had received and read the following advice," again, not including the draft Norton Rose advice or any reference to it?---Yes.

And then it says a couple of lines down, “The board noted that the only amendments in the employment agreements were as per 2.1, one to six below.”?---Yes.

5 “The balance of the terms and conditions of the employment agreements remain the same.” Now, do you accept that that’s incorrect, at least to the extent that there’s no reference here to the notice period- -?---Yes.

10 - - - which is now seven days, with subject to waiver. So on the face of this it looks like the board doesn’t understand that that’s happened, because there’s no reference to them knowing that you can leave immediately if the board – if the chairman allows you to?---And that wasn’t contained in any of the – in the final advice from Norton Rose, no.

15 Well, I’m not asking you about that. I’m asking you, it says the board noted that the only amendment, so whatever was in those papers they’re recording that there are only those amendments?---Yes.

20 Now, if you turn over, please, to 60, [indistinct] just to note, this is the letter that comes out to you on the 5<sup>th</sup> of August since the end of this story, and it includes the changes that we’ve looked at?---Yes.

Including the seven days’ notice at 15.2, and the material adverse change being a change to the government?---Yes.

25 And as it happened the election did occur on the 24<sup>th</sup> of March 2012?---Yes.

And on the 26<sup>th</sup> of March all four of you executives gave notice, and the seven day period was waived?---Yes.

30 And you gave notice in the resignation letter which had been prepared as we’ve seen by Norton Rose back in July?---I assume that would be the case.

35 And you got the benefits which you had sought under these agreements – in your discussions with Norton Rose?---Yes.

Commissioner, unless there’s anything else that completes this topic, and I note the time. I’m sorry I’ve gone over the time.

40 COMMISSIONER WHITE: You haven’t gone over time, Mr Pincus. It’s a very good idea, I think, if we don’t start a fresh topic today.

MR PINCUS: Thank you.

45 COMMISSIONER WHITE: All right. Mr Tuttle, I’ll have to ask you to come back tomorrow?---Yes.

You know you’ve got two more volumes to go?---Yes.

All right, so at 10 o'clock tomorrow, thank you.

**MATTER ADJOURNED at 4.23 pm UNTIL TUESDAY, 1 OCTOBER 2013**

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