



11 October 2024

BY EMAIL

The Hon. Scott Farlow MLC
Committee Chair
Select Committee of the Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Farlow MLC

**Select Committee into the Proposal to develop Rosehill Racecourse -
Response to Supplementary Questions**

We refer to the 121 “supplementary questions” provided to Dr Saranne Cooke, Chairman of Racing NSW on 20 September 2024 (the **Supplementary Questions Document**). The following response has been prepared on behalf of, and as instructed by, Dr Cooke.

As you are aware, Committees established by the House have only those powers that are required to fulfil their functions agreed to by the House. The questions asked by a Committee should therefore be relevant to its terms of reference. This accords with the Legislative Council’s “Committees-Rules, Resolutions and Membership” document, which, in Part 2, Section 4, requires that the Chair of an inquiry will “ensure” that all questions put to witnesses are relevant to the inquiry.

We also understand that the Committee accepts that it should conduct its proceedings in accordance with the rules of procedural fairness and natural justice.

Dr Cooke and Racing NSW remain ready and willing to assist the Committee in answering those questions posed by the Committee that are within the Committee’s powers and are in appropriate form.

However, the Supplementary Questions Document has not been properly issued for the reasons set out below.

First, many of the questions contained within the Supplementary Questions Document are, on their face, clearly not directed at matters within the Committee’s terms of reference. Particularly in light of the significant number of questions asked, it is oppressive to expect Dr Cooke to consider those questions *seriatim* when it is evident that inadequate attention has been paid to the legitimate limits of the Committee’s inquiry in issuing the Supplementary Questions Document.

Second, many of the questions contained within the Supplementary Questions Document are not framed so as to seek to elicit an answer to a question of fact, but rather are tendentious or in the form of submission. These questions include (but are not limited to):

- Q1: “[W]hat does Racing NSW have to hide?”
- Q2: “How has Racing NSW become so unaccountable that it seeks itself as above the powers of Parliament?”
- Q22: “What are you doing to change the widespread perception in the racing industry that the NSW Racing Board is a group of ‘Good-time Charlies’ enjoying free raceday hospitality...?”
- Q30: “When will this racing dictatorship end and due process resume?”
- Q56: “Is there any limit to the patronage-and-favours dispensed in and around Racing NSW?”

While the Committee’s inquiry is not a form of legal proceeding, as we note above we understand the Committee accepts that it is obliged to act in a fair way.

Questioning of the nature set out in the Supplementary Questions Document may, in legal proceedings, give rise to the risk of an unfair trial.¹ In that context, it has been said that questioning should not “belittle or denigrate” one party’s case, or “be sarcastic or snide”.² This is true of both judicial and administrative decision-makers and prosecutors.³

Moreover, it is unfair to expect Dr Cooke to respond to questions of this nature.

Third, many of the questions posed in the Supplementary Questions Document contain an express or implicit premise as to the existence of a fact or matter that is a matter of common ground. These questions include (but are not limited to) questions 15, 16, 17, 20, 22, 23, 24, 25, 27, 28, 29, 31, 32, 33, 36, 37, 38, 39, 40, 42, 43, 45, 49, 56, 57, 58, 90, 91.

In legal proceedings, such compound questioning is considered to be unfair and objectionable.⁴ Further, and in any event, it is very difficult for Dr Cooke to usefully respond to such questions when they take as their premise a matter asserted as fact that is, instead, contentious. This is particularly so where the particular evidence upon which the fact is asserted is not particularised or disclosed.

In the above circumstances, Dr Cooke is not obliged to, and does not intend to, respond to the Supplementary Questions Document. As noted above, Dr Cooke

¹ See, for example, *Galea v Galea* (1990) 19 NSWLR 263 at 280.

² *Royal Guardian Mortgage Management Pty Ltd v Nguyen* (2016) 332 ALR 128 at [17].

³ *Hughes v R* (2015) 93 NSWLR 474 at [265]-[275].

⁴ See, for example, *Admiral International Pty Ltd v Insurance Australia Ltd* [2022] NSWCA 277 at [203]-[204].

remains willing to assist the Committee with any legitimate inquiry consistent with the scope of its powers and the requirements of procedural fairness.

We also wish to place on record an additional point of concern. An inherent component of procedural fairness is that a decision-maker bring an open mind to the subject matter of the inquiry, and not demonstrate any actual or apprehended bias. Apprehended bias may arise where a bystander would reasonably apprehend that a decision-maker is so committed to a particular conclusion as to be incapable of alteration, whatever evidence or arguments a person subject to inquiry may present.

The content of the Supplementary Questions Document suggests that the person asking those questions is so committed to particular views and conclusions as to be incapable of altering those views. In those circumstances, any conclusions reached by, or in collaboration with, that person would be a risk of contravening the rules of procedural fairness.

We ask that the Committee take these matters into account in determining the appropriate way to proceed with the inquiry.

Yours Sincerely,
Racing NSW

Pete Sweney
General Counsel