

INQUIRY INTO CERTAIN AUSTRALIAN COMPANIES IN RELATION TO
THE UN OIL-FOR-FOOD PROGRAMME

Before The Hon TRH Cole AO RFD QC

Held at Court 2, Level 5,
55 Market Street, Sydney

On Wednesday, 22 March 2006, at 10.10am

1 MR AGIUS: Mr Commissioner, I want to deal with some
2 administrative matters first. I have an additional 40
3 statements from present and past officers or employees of
4 the Commonwealth, which I will tender and ask to be marked
5 as confidential exhibits, on the same basis that
6 publication of them or their content or any copies of them
7 be prohibited, and I'd ask my learned friends to consider
8 the statements with a view to advising the inquiry as to
9 whether or not they wish to cross-examine any of the
10 deponents. I tender those statutory declarations together
11 with a schedule upon which the confidential exhibit numbers
12 might be recorded. We will have copies of those available
13 for collection at our office during the course of the day.
14 They're being prepared as I speak.

15
16 THE COMMISSIONER: The schedule of statutory declarations
17 will be confidential exhibit 235C. I shall mark the
18 statutory declarations sequentially with the schedule,
19 which is confidential exhibit 235C, 236C to 275C inclusive.
20 I make a non-publication order in respect of each of those
21 confidential exhibits pursuant to section 6D of the Royal
22 Commission Act. They are not to be published pending their
23 tender as public exhibits.

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25 EXHIBIT #235C SCHEDULE OF STATUTORY DECLARATIONS

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27 EXHIBIT #236C-275C STATUTORY DECLARATIONS

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29 MR AGIUS: My planned course was to continue with all of
30 the evidence that was to be called on the issue of the
31 knowledge of the Commonwealth this week. We're not in a
32 position to do that. I understand that there are further
33 statements to come from DFAT officers. Whilst we
34 appreciate that many of these officers are in far-flung
35 posts now, and that there is some practical difficulty in
36 obtaining statements from them, we do understand that an
37 effort is going to be made to have all of those statements
38 to the inquiry by Friday at 5 o'clock.

39
40 That being the case, we will return to the recall and
41 the calling of further witnesses that I might call AWB
42 witnesses tomorrow. This is an indicative list and order
43 of AWB and BHP witnesses to be called from tomorrow. We've
44 done our best to allocate time on assessments. I would
45 expect to call Mr Fuller and Mr Tighe on Thursday. On
46 Friday we would expect to call Mr Prescott, from BHP, and
47 then return to AWB to recall Mr Cooper and to call

1 Messrs Donges and Gibson.

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On Monday of next week we expect to be calling Mr Beaumont; to recall Mr Watson, for those who have indicated that they wish to cross-examine him; and to call Mr Hockey. On Tuesday of next week we propose to call Messrs Rowland and Hargreaves and to recall Mr Hogan. There are those who have indicated that they wish to cross-examine Mr Hogan.

On Wednesday of next week we propose to recall Mr Whitwell and to call Mr Edmonds-Wilson. On Thursday of next week we propose to recall Messrs Emons, Officer and Stott. We are yet to allocate any witnesses to be called or recalled on Friday of next week. We propose to recall Mr Lindberg on Monday, 3 April. We are hopeful of calling Mr Laskie. We are yet to allocate a time.

It should not be thought that they are all the witnesses that are yet to be called before this inquiry. There may be further AWB witnesses called. One should not draw any conclusion about who will be called on the issue of the knowledge of the Commonwealth. Until I've seen all of the DFAT statements in that regard, I'm simply not in a position to make that assessment. Further evidence in that regard, if it is to be called, is likely to be called on or after Monday, 3 April.

That's the order in which we hope to call those witnesses. We may not be able to call them precisely on those days. We have endeavoured, in structuring that list, to meet the convenience of others as best as we can. If my learned friends wish to speak to me about any of those matters, we would be pleased to see them at the close of evidence today.

As I understand it, Ms Moules will be available in the course of the morning for examination, or for further examination. We've had communication with Mr Winneke and we understand that Mr Carter is in a position to conduct the examination that Mr Winneke would have conducted in that regard, and we expect, if I'm right about this, that Mr Cuddihy will be available in the course of the day as well.

MR ROBERTSON: He'll be here this morning, Mr Commissioner. Two people my learned friend Mr Agius

1 didn't mention but who are in the process of arriving from
2 Seoul and Abu Dhabi respectively are Mr Crews and
3 Mr Brewer, and I think Mr Agius proposes that they give
4 their evidence in the morning.

5
6 MR AGIUS: If they're available to us, we would call them
7 tomorrow morning, before I start on the AWB witnesses. So
8 it may be that we have a short day so far as oral evidence
9 is concerned today. We propose to call Ms Grant-Thomson
10 and then to recall Ms Moules and then Mr Cuddihy.

11
12 I would call, then, Ms Grant-Thomson.

13
14 <MAUREEN LOUISE GRANT-THOMSON, sworn: [10.20am]

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16 <EXAMINATION BY MR AGIUS:

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18 MR AGIUS: Q. Might we have your full name, please?

19 A. My name is Maureen Louise Grant-Thomson.

20
21 Q. You appear here today in answer to a notice requiring
22 your attendance?

23 A. Yes.

24
25 Q. We have two statutory declarations from you,
26 Ms Grant-Thomson. I will bring up the first -
27 DFT.0013.0571. That's the first page of your first
28 statutory declaration. I think you will see your initials
29 at the bottom of that first page. If we go to the last
30 page, 0575, do you see your signature on that page?

31 A. Yes, I do.

32
33 Q. Are the contents of that statutory declaration true
34 and correct to the best of your knowledge and belief?

35 A. Yes, that's right.

36
37 MR AGIUS: I tender that, Mr Commissioner, as a public
38 exhibit.

39
40 EXHIBIT #632 FIRST STATUTORY DECLARATION OF
41 MS GRANT-THOMSON, DATED 7/3/06, BARCODED DFT.0013.0571-0575

42
43 MR AGIUS: Q. We have a further statutory declaration
44 from you. Could we bring up, please - I just don't have a
45 barcoded copy of that --

46
47 THE COMMISSIONER: It's DFT.0020.0183.

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MR AGIUS: Q. Again, you'll see your signature at the bottom of that first page. If we go to the last page of the document --

THE COMMISSIONER: Which is 0185.

MR AGIUS: Thank you.

THE COMMISSIONER: It was formerly confidential exhibit 230C.

MR AGIUS: Q. Do you see your signature on that page, Ms Grant-Thomson?

A. Yes, I do.

Q. Are the contents of that statutory declaration true and correct to the best of your knowledge and belief?

A. Yes, that's correct.

EXHIBIT #633 SECOND STATUTORY DECLARATION OF MS GRANT-THOMSON, BARCODED DFT.0020.0183-0185

MR AGIUS: Q. We see from your first statutory declaration that you were employed by the Department of Foreign Affairs and Trade for the four years between June 1995 and early 1999?

A. Yes, that's correct.

Q. I want to take you to the memo of 23 May, exhibit 272, DFT.0010.0185. This is Mr Pierce's memo of 23 May 1996. It deals with matters that occurred the previous day. The first line of the memo should read, as we're told by Mr Pierce:

On 22 May, Ms Grant-Thomson (ILD) and I...

That is referring to Mr Pierce. We know what you've written in your statutory declarations, Ms Grant-Thomson. May we take it that you have little or no independent recollection of this?

A. I don't have an independent recollection of the 22 May 1996 meeting. My recollection is a general recollection of the issue that was being pursued at that time by BHP.

Q. I should tell you that the name in the second line, the first name which is misspelt as "Goosacre", should be

1 "Goodacre". Do you have a recollection of having a meeting
2 on 22 May, or can you say whether or not the discussions
3 referred to in this memo were face to face or over the
4 telephone?

5 A. I expect that that meeting was a face-to-face meeting.
6

7 Q. Can you say from your recollection whether you and
8 Mr Pierce met with representatives of AWB and BHP at the
9 same time?

10 A. I can't recall whether we met with them concurrently.
11

12 Q. The memo or minute seems to be written on that basis,
13 because when one goes to paragraph 2, it says:

14 We explained that, in our judgment...

15
16 That paragraph isn't qualified to limit the explanation to
17 one party or the other, and otherwise one would expect that
18 you would have had two meetings and said exactly the same
19 thing on two meetings about an issue with which each of the
20 other parties were concerned. So the inference that I
21 would draw from that would be that there was one meeting
22 with all three parties present. Do you have any
23 recollection that would militate against the drawing of
24 such an inference?
25

26 A. No, not at all. I would conclude likewise.
27

28 Q. You said that your recollection is a general
29 recollection of the issue that was being pursued at that
30 time by BHP. What was that issue?

31 A. That issue pertained to a shipment of wheat that had
32 been authorised by the sanctions committee on 16 November
33 1995 and an authorisation had been issued by the department
34 on 31 December 1995. The issue that was being pursued was
35 whether that shipment which was authorised as a gift could
36 be reformulated into a credit arrangement.
37

38 Q. Who on behalf of BHP was pursuing that issue?

39 A. Mr Stott.
40

41 Q. Was that issue pursued with you?

42 A. Yes.
43

44 Q. On occasions other than at this meeting?

45 A. Yes.
46

47 Q. Did you see this memo at any time close to 22 May? In

1 other words, did you see it shortly after it was written,
2 on 23 May?

3 A. In all likelihood, I would have seen this memo after
4 it had been written on 23 May.

5
6 Q. On or about that day?

7 A. Yes.

8
9 Q. Do you have any recollection of disagreeing with any
10 of the content of the memo?

11 A. No, not at all. I would have agreed with that memo.

12
13 Q. In the course of the ordinary business practice of
14 DFAT, following a meeting such as this, where two DFAT
15 officers attended and one of them prepared a minute, would,
16 in the ordinary course, the other DFAT officer be given a
17 copy of the minute or see a copy of the minute before it
18 was transmitted to a secretary?

19 A. Yes.

20
21 Q. So if you hadn't seen a memo such as this shortly
22 after the meeting, or shortly after the memo was drawn up,
23 that would be an unusual circumstance?

24 A. Yes.

25
26 Q. The memo says in paragraph 6:

27
28 Stott did, however, suggest that he could
29 obtain from the Iraqis some form of
30 side-letter to cover the 20,000 tonnes
31 already shipped. That is, the Iraqis would
32 promise some form of payment in kind (oil,
33 good will) at some unspecified date.

34
35 What do you say about any suggestion that statements to
36 that effect were not made by Mr Stott but, rather, came
37 from some other source at that meeting?

38 A. It was absolutely Mr Stott who was putting forward
39 that.

40
41 Q. Paragraph 6 goes on:

42
43 Stott asked if we would be prepared
44 formally to be made aware of that proposal,
45 on the basis that BHP might, at some later
46 stage, need some future Ambassador in
47 Baghdad to argue that it should be

1 redeemed, or, if the side-letter were
2 publicised, BHP would need us to fend off a
3 hostile American reaction.

4
5 What do you say to any suggestion that the statements there
6 attributed to Mr Stott were not made by him but were made
7 by other persons at the meeting?

8 A. Those statements were absolutely made by Mr Stott.

9
10 Q. In paragraph 7 Mr Pierce has written:

11
12 In my judgment (and Ms Grant-Thomson's),
13 there is nothing at all for us in giving
14 any form of tacit approval to any such
15 deal.

16
17 Does this memo in that regard reflect your view?

18 A. Absolutely.

19
20 Q. To the extent to which this memo reflects a view, was
21 it a view that you shared with Mr Pierce at that time?

22 A. Absolutely.

23
24 Q. Is there any doubt in your mind that those who
25 attended the meeting were emphatically told that no
26 retrospective approvals for shipments already sent could be
27 permitted?

28 A. It was a very emphatic response that we made to them.
29 I was very emphatic.

30
31 Q. You've said in your statutory declarations that you
32 recall having a part to play in the settling of a letter
33 which was sent to Mr Harley on 27 May 1996. We have a copy
34 of that letter as exhibit 266. Would you bring up, please,
35 DFT.0010.0178. Just for more abundant caution, do you
36 identify that as the letter which you assisted in settling?

37 A. Yes, that's correct.

38
39 Q. There's one document that has been provided to us by
40 the department. I'll see if it's on our electronic system.
41 It's not a document to which you've made reference. Could
42 we attempt to bring up, please, DFT.0078.0158? I'll pass
43 you a copy of it in any event. I'll also provide one for
44 the Commissioner. We're not able to bring it up. I'll see
45 if we can have some copies made of it.

46
47 THE COMMISSIONER: In the meantime I'll pass my copy down.

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MR AGIUS: Q. I wonder if you would read it, Ms Grant-Thomson. I draw your attention to the fact that, on the last page, although your name appears and the date, 16 May 1996, appears, it's not signed.

THE COMMISSIONER: I'll mark the minute exhibit 634.

EXHIBIT #634 UNSIGNED DEPARTMENT OF FOREIGN AFFAIRS AND TRADE MINUTE, DATED 16/5/1996, BARCODED DFT.0078.0158

MR AGIUS: Q. Can you assist us, Ms Grant-Thomson: do you know whether or not this advice was a draft or whether it was an advice that you did in fact forward to the persons who are recorded on the first page?

A. In all likelihood, it would have been forwarded to the people on the first page.

Q. I take it the first person is Mark Pierce, is it?
A. That's right.

MR AGIUS: Thank you. That's the examination of this witness, Mr Commissioner.

THE COMMISSIONER: Does anybody wish to ask the professor any questions?

MR LACAVA: Just a couple, sir, if I may.

<EXAMINATION BY MR LACAVA

MR LACAVA: Q. Ms Grant-Thomson, when you commenced to give evidence this morning, my learned friend Mr Agius asked you about the meeting on 22 May 1996; do you recall that?

A. Yes, I recall that question.

Q. He asked you whether or not it was a face-to-face meeting or over the telephone; do you recall that?

A. Yes.

Q. The transcript doesn't record how long it took you to answer that question. There was a lengthy pause. Was that because you really have no recollection of that meeting apart from the subject matter and what is described in the minute, exhibit 272?

A. I don't have independent recollection of specific

1 meetings and specific exchanges within meetings, but I do
2 have a general recollection of the main issue that was
3 being dealt with.

4
5 Q. Yes. And you're entirely reliant upon what was said,
6 upon the content of the minute, are you not?

7 A. No, because I have this general recollection of the
8 issue that is quite independent of that minute of 23 May
9 1996.

10
11 Q. But in relation to what was said and by whom, you're
12 reliant upon the minute, are you not?

13 A. No. I have a recollection of the general issue, and
14 the general issue was being put forward by Mr Stott to the
15 department about reformulating a gift into a credit
16 arrangement.

17
18 Q. Yes. But apart from that, you're reliant upon the
19 minute?

20 A. Well, I'm reliant on the minute insofar as it refers
21 to a meeting on that specific day of 22 May, and the exact
22 number of attendees and that level of detail, but as far as
23 the general issue is concerned, I have a very clear and
24 independent recollection.

25
26 Q. Who prepared the minute?

27 A. Mr Mark Pierce.

28
29 Q. When you attended the meeting, did you take notes?

30 A. I haven't seen the file from the department, so I
31 don't know whether I took a file note or not.

32
33 Q. So you have no recollection of taking notes?

34 A. I haven't seen the file, so I don't know whether a
35 file note was taken by me or not in relation to that
36 meeting.

37
38 Q. So you'd need to see the notes to know whether or not
39 you in fact did take notes; is that what you're saying?

40 A. I'd need to see file - to examine the file, to see
41 whether or not I had taken notes of that meeting.

42
43 Q. You haven't been shown the file for the purposes of
44 preparing your evidence before this Commission?

45 A. As I'm no longer an officer in the department, I don't
46 have access to the department's files.

47

1 Q. That's not what I asked you.

2 A. I haven't been --

3

4 Q. You haven't been shown the file for the purposes of
5 preparing your evidence before this Commission; is that
6 right?

7 A. That's correct.

8

9 MR LACAVA: Thank you.

10

11 THE COMMISSIONER: Anything else?

12

13 MR AGIUS: I have nothing arising.

14

15 THE COMMISSIONER: Thank you, Professor, you're excused.

16

17 <THE WITNESS WITHDREW

18

19 MR AGIUS: I call Ms Moules. I'm not clear on whose
20 behalf it is there is to be an application to examine her
21 further.

22

23 MR LACAVA: Whilst there's an interruption, could I just
24 have recorded on the transcript, Commissioner, that, on
25 behalf of Mr Stott, we do not require Mr Harley or Mr Lyons
26 for cross-examination.

27

28 THE COMMISSIONER: Thank you.

29

30 MR HMELNITSKY: In those circumstances, Mr Commissioner, I
31 think Mr Lacava was the only person who had reserved his
32 position in relation to those witnesses. In the
33 circumstances, might they then be released?

34

35 THE COMMISSIONER: Any objection?

36

37 MR AGIUS: No, we have no objection, Mr Commissioner. I
38 was just reflecting on Mr Prescott's statement, which has
39 only recently been received. No, we have no objection to
40 those two witnesses being excused.

41

42 THE COMMISSIONER: Very well. Then I so release them.

43

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1 <BRONTE NADINE MOULES, on former oath: [10.46am]
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3 THE COMMISSIONER: You are on your former oath, Ms Moules.
4
5 THE WITNESS: Yes.
6
7 <EXAMINATION BY MR AGIUS:
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9 MR AGIUS: Q. Might we just have your name again for the
10 record, please, Ms Moules?
11 A. Yes, Bronte Nadine Moules.
12
13 THE COMMISSIONER: An application has been made on behalf
14 of Mr Long, I think, Mr Snowball and Rhine Ruhr.
15
16 MR CARTER: I can indicate that my learned friend was
17 correct; Mr Winneke and I have communicated. Clearly I
18 don't appear for Rhine Ruhr, but there was some overlap in
19 the matters we wished to take up.
20
21 <EXAMINATION BY MR CARTER:
22
23 MR CARTER: Q. Can I ask that the witness be provided
24 with the folder S4. Ms Moules, this is the folder that my
25 learned friend Mr Agius had you examine on 14 March, when
26 you first gave evidence. Can I ask you to turn to tab 16.
27 Have you seen that document before?
28 A. No, I haven't.
29
30 Q. Have you seen it prior to today?
31 A. No, I haven't seen this document before.
32
33 Q. You've not been shown that document in the course of
34 this week?
35 A. No, not that particular document, no.
36
37 Q. Are you aware in general terms at all of the contents
38 of that document?
39 A. No, I'm not.
40
41 Q. Perhaps, given that you haven't seen it, as we now
42 know from your answer, would you like a moment to read over
43 the document to satisfy yourself that that answer is
44 correct?
45 A. All right. Could you repeat the question, please?
46
47 Q. The question was are you aware, in general terms, of

1 the contents of that document?

2 A. Only to the extent that I've now read it. I wasn't
3 previously aware of this document.

4

5 Q. Just so that we have the rules clear here, Ms Moules,
6 you understand I've not seen what's in that folder. The
7 people that have are counsel assisting and certain other
8 solicitors and the Commissioner.

9 A. I'm aware of that.

10

11 Q. The reason I'm taking you to tab 16, I'll shortly come
12 to 17, is because when you were examined on 14 March there
13 were only 15 documents in that folder?

14 A. Right.

15

16 THE COMMISSIONER: Mr Orr, when 16 and 17 were added to
17 this folder, I expressed some reservations about whether
18 they fell within the category which I had upheld. As I
19 recall it, I think I said I'd consider it overnight. The
20 matter had been left there. Do you press for 16 and 17 to
21 be the subject of public interest immunity?

22

23 MR ORR: Yes, Commissioner, we do.

24

25 THE COMMISSIONER: What's the basis for that?

26

27 MR ORR: As I understand it, Commissioner, they reveal the
28 agencies.

29

30 THE COMMISSIONER: Is that true? Do you have the
31 documents there?

32

33 MR ORR: I don't, Commissioner. If you would give me one
34 moment, I can get them.

35

36 MR AGIUS: I could pass my copy to my learned friend, if
37 that's of any assistance.

38

39 MR CARTER: Just while that's happening, Commissioner, I
40 can confirm that upon re-reading the transcript last night
41 you stated in respect of 16 and 17 that you were accepting
42 it on a provisional basis.

43

44 MR AGIUS: I have provided my copy of that document to my
45 learned friend.

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47 THE COMMISSIONER: Thank you.

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MR ORR: In our submission this document does reveal the agency that collected this information. Mr Commissioner, as I understand our general proposition, it was that this material should not be disclosed, on the basis of the content of the materials and on the basis of the way in which these materials were collected.

THE COMMISSIONER: But this does --

MR ORR: Including the agencies which collected the materials and the way in which those materials were collected. It does seem to disclose the agency which collected the materials.

THE COMMISSIONER: Are you speaking of the last three numbered paragraphs?

MR ORR: Yes, Commissioner. It's information as to the way in which and by whom this material was collected.

THE COMMISSIONER: I can perhaps understand the last paragraphs numbered 1, 2 and 3, but subject to that I'm having difficulty understanding why the balance should not be made public.

MR ORR: Mr Commissioner, I probably need to get some urgent instructions in relation to this, just because some of these matters aren't necessarily clear on the face of the document - if, Mr Commissioner, you are following that submission - as to what is being disclosed.

THE COMMISSIONER: Do you have some other matter you can go on with, Mr Carter?

MR CARTER: Yes, I do, Commissioner.

THE COMMISSIONER: All right. Mr Orr, it might be convenient if you could get those instructions while Mr Carter continues. We'll come back to this, Mr Carter.

MR CARTER: Q. Ms Moules, just staying with this document --

THE COMMISSIONER: Could you leave 16 and 17 for the time being, please?

1 MR CARTER: I'll leave 16 and 17, Commissioner.

2
3 Q. I wonder if the document which is exhibit 584 - mine
4 doesn't have a barcode number on it - could be brought up,
5 please? That's the distillation of secret exhibit 4. It's
6 the two-page, nine-point document.

7
8 MR AGIUS: I have the barcode GOV.0002.0066.

9
10 MR CARTER: Q. At the time that you were examined, this
11 document hadn't been provided, and it's the fact that this
12 document has now been provided that has led to our
13 application to further examine you; you understand that?

14 A. Yes, I understand.

15
16 Q. When Mr Agius examined you - and I'll take you to the
17 transcript references if there's any objection to the
18 accuracy of what I'm putting; otherwise I'll try to keep
19 the transcript uncluttered, if that's okay with you - when
20 you were taken to document number 1 in the folder, you said
21 that you couldn't recall having looked at the document
22 before, but that you are aware that, in general terms, it
23 was an issue in the sanctions committee in the United
24 Nations - do you recall that evidence?

25 A. Yes, I recall saying something to that effect.

26
27 Q. Would you prefer I went to the transcript before I
28 moved on, or are you content with that?

29 A. No, I recall I said something to that effect.

30
31 Q. What I want to ask you, by reference to the
32 distillation of the secret exhibit - have you had a chance
33 to look at that before giving your evidence?

34 A. Yes, I have.

35
36 Q. Are you able to identify which paragraph in the
37 distillation this relates to?

38
39 MR AGIUS: I object to that question.

40
41 THE COMMISSIONER: Yes, I reject that question.

42
43 MR CARTER: Well, sir, could I just clarify why? I'm
44 looking at the reasons for your ruling - that is, the one
45 that was handed out with the authorities footnoted to it.
46 In paragraph 13(1)b you stated, Commissioner, that the
47 witnesses may be asked questions about the documents in a

1 manner that does not disclose in any way the contents of
2 the documents, the sources of the contents of the documents
3 or the originating agency of the contents of the documents.
4 In my respectful submission, this question, by reference to
5 the distillation of the secret exhibit that in my learned
6 friend's submission accords to the parties procedural
7 fairness, does not transgress that ruling.

8
9 THE COMMISSIONER: No, I reject the question.

10
11 MR CARTER: Can I take it, then, that I can question the
12 witness in respect to the distillation - that is, the
13 public document --

14
15 THE COMMISSIONER: Absolutely. It's a public exhibit.

16
17 MR CARTER: -- but the difficulty is any question that
18 endeavours to connect that to the witness's evidence with
19 respect to particular documents, secret, unseen, is
20 prohibited?

21
22 THE COMMISSIONER: Any question which seeks to relate the
23 distillation to a particular document will not be allowed.

24
25 MR CARTER: If the Commissioner pleases.

26
27 Q. I'm not going to deal with this, in light of that
28 ruling, by reference to your evidence with respect to
29 specific documents. I'm going to ask you some questions in
30 respect of the distillation. Could you read point 1 to
31 yourself, please? Were you aware of unassessed
32 intelligence to that effect?

33 A. No, I was not aware.

34
35 Q. Were you aware, in general terms, of the subject
36 matter conveyed by that point?

37 A. No, I was not aware.

38
39 Q. If you'd like the time to read it, that's fine, but I
40 want to ask you the same questions with respect to the
41 second paragraph.

42 A. No, I was not aware of that information.

43
44 Q. Were you aware of that information - I'm not talking
45 about information received by you via the Australian
46 Intelligence Community - from any other source?

47 A. No, I wasn't.

1
2 Q. Can I ask you to look at point 3.
3 A. I was not aware of this information.
4
5 Q. Either via Australian Intelligence Community or via
6 other people?
7 A. That's correct.
8
9 Q. What about point 4, Ms Moules?
10 A. No, I was not aware of this information.
11
12 Q. We'll keep going through the process. I'll take your
13 answer to be you were not aware of it in any form, either
14 by way of intelligence, assessed, unassessed, or any other
15 source; that's your evidence?
16 A. No, not of the specific information contained in this
17 paragraph, no.
18
19 Q. Could we move now to paragraph 5.
20 A. No, I was not aware of this information.
21
22 Q. Paragraph 6?
23 A. No, I was not aware of this information.
24
25 Q. Paragraph 7?
26 A. No, I was not aware of this information.
27
28 Q. Paragraph 8?
29 A. No, no, I was not aware of that information.
30
31 Q. Paragraph 9 doesn't really deal with the same
32 questions, does it. So do I take it that your answer,
33 then, in respect of paragraphs 1 to 8 is that you were not
34 aware of the information in respect of any of those
35 matters?
36 A. That's correct.
37
38 Q. And that accordingly that distillation tells us
39 nothing about the evidence in respect of five documents,
40 being 1, 2, 5, 6 and 8, that you indicated in your sworn
41 evidence on 14 March that you at least had a familiarity
42 with the contents of them, by reason of, in most cases,
43 being aware that it was an issue within the sanctions
44 committee of the United Nations.
45
46 MR ROBERTSON: With respect, Mr Commissioner, I don't
47 think this witness either can answer this question or

1 should answer it. As I understood it, she was being asked
2 to say something about secret exhibit 4 and the contents of
3 it, which I thought was what you were ruling she should not
4 do.

5
6 MR CARTER: Can I respond to that, Commissioner?

7
8 THE COMMISSIONER: Yes.

9
10 MR CARTER: Before I do, can I briefly say that what's
11 already happened this morning in respect of documents 16
12 and 17 points up why the submissions of Mr Barker, at
13 least, and Mr Forrest and I are correct. Moving to this
14 particular point, the evidence of the witness in respect of
15 documents 1, 2, 5 --

16
17 THE COMMISSIONER: What's the transcript reference?

18
19 MR CARTER: -- 6 and 8 - I'm about to provide them, sir -
20 on 14 March, transcript 4483 through to transcript 4486 in
21 the course of the examination by my learned friend Mr Agius
22 revealed that in respect of those five documents Ms Moules
23 stated - I am summarising the effect of the evidence here -
24 that whilst she had either not recalled or had not seen the
25 individual documents, she was aware of it - that is, the
26 contents of the document - being an issue within the
27 sanctions committee in the United Nations. In respect of
28 document 5, for example, she stated at transcript 4485,
29 line 33, that she was aware from debriefings about the
30 Security Council committee work of the contents of that
31 document.

32
33 In my respectful submission, sir, given the already
34 extremely difficult parameters within which this
35 examination must take place, there is nothing objectionable
36 about this line of questioning at all. Indeed, it is the
37 only line of questioning I'm permitted to pursue, given
38 your initial ruling and given your ruling today.

39
40 THE COMMISSIONER: Mr Carter, what you must understand is
41 that the documents contain material which is irrelevant to
42 the terms of my inquiry. The distillation is of material
43 which is relevant to the terms of my inquiry.

44
45 MR CARTER: Yes, sir. In that sense, there's nothing
46 wrong with the witness being permitted to answer my
47 question.

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THE COMMISSIONER: Well, certainly there is.

MR CARTER: Could I just remind you, sir, of what my question was? It was that that document - namely, the distillation - tells us nothing about the evidence in respect of the five documents, being 1, 2, 5, 6 and 8, that you indicated in sworn evidence on 14 March you had at least a familiarity with by reason of, in most cases, being aware that it was an issue within the sanctions committee of the United Nations.

MR AGIUS: I have an objection to that which you haven't heard, Mr Commissioner, and which is different to my learned friend Mr Robertson's objection, although I support his objection; that is, that the question doesn't make sense and can't possibly be answered.

THE COMMISSIONER: It's rather a statement, I think, isn't it?

MR CARTER: I'll try it another way, sir. I'll take it you've rejected that question. I'll try to move on with the examination.

THE COMMISSIONER: Yes.

MR CARTER: Q. Ms Moules, when you stated in respect of document 1, in your evidence on 14 March, at transcript 4483, line 44, that you were aware of it being an issue in the sanctions committee in the United Nations, how is it that you were so aware? I'm not asking you anything about the documents now; I'm simply asking you about your evidence that you were aware it was an issue in the United Nations.

MR AGIUS: I object to that.

MR ORR: I object to that.

MR AGIUS: That actually isn't the evidence. I didn't mean to cut off my learned friend Mr Orr, but the evidence at 4483, at line 44, was this:

Q. Without disclosing the content of that document, are you able to indicate whether you were ever privy to the information

1 disclosed in that document?

2 A. Not specifically, no.

3 Q. Would you go to the next document.

4 When you say "not specifically", what do
5 you mean by that?

6 A. In very broad terms, I was aware
7 that --

8

9 Then my question was:

10

11 Q. You are not permitted to disclose the
12 content of the document.

13 A. I realise that, yes. I realise that.

14 In very broad terms I'm aware of some of
15 this type of issue being an issue in the
16 sanctions committee - in very broad terms.

17 Q. Of being an issue that the sanctions
18 committee looked at?

19 A. Yes.

20 Q. In very broad terms?

21 A. In very broad terms.

22 Q. In relation to AWB Limited?

23 A. No.

24 Q. In relation to the company Alia?

25 A. No.

26

27 My friend is not accurately putting to the witness exactly
28 what she said on this topic in terms of the way in which
29 any issue was looked at by the sanctions committee.

30

31 MR CARTER: I'll accept that, sir, and will do it the long
32 way.

33

34 Q. You've heard what Mr Agius has just read in terms of
35 your evidence of that, and I accept that's what the
36 transcript says. In what way did you become aware in very
37 broad terms that this type of issue was being an issue in
38 the sanctions committee?

39 A. The aspect that I was referring to being aware of in
40 broad terms was something that was common knowledge in the
41 UN. It was referred to in debriefings from sanctions
42 committees. I think it was referred to in UN documents
43 themselves, in reports of the operation of the Oil-for-Food
44 Program. It was a very commonly understood topic - the
45 broad topic I'm referring to.

46

47 Q. All right. I don't think I can ask you about that

1 topic, because that might violate us going to the contents
2 of the document.
3
4 MR CARTER: Is that right, sir?
5
6 THE COMMISSIONER: Yes, it has absolutely nothing to do
7 with this inquiry.
8
9 MR CARTER: Well, sir, we don't know that.
10
11 THE COMMISSIONER: I know, but I do.
12
13 MR CARTER: Q. When you referred to debriefings from
14 sanctions committee, who would debrief you?
15 A. The chair of the sanctions committee usually.
16
17 Q. Who was that?
18 A. It was the - it would vary from year to year. It was
19 the ambassador usually of the country which had the
20 chairmanship of the sanctions committee.
21
22 Q. Is that the only person who debriefed you about the
23 sanctions committee?
24 A. About sanctions committee meetings?
25
26 Q. About the meetings?
27 A. As far as I recall, it was only the ambassador that
28 gave those debriefings.
29
30 Q. All right. You're talking there about the
31 661 Committee?
32 A. That's correct.
33
34 Q. Do you use the 661 Committee and the sanctions
35 committee interchangeably?
36 A. That's correct.
37
38 Q. All right. In relation to another of the documents --
39
40 THE COMMISSIONER: Which number?
41
42 MR CARTER: Number 5, sir.
43
44 Q. At transcript 4485, line 33, you had been taken to the
45 sixth document already, but you wanted to go back:
46
47 ...I should say on document 5, again, in

1 very broad terms, some of the - in a very
2 broad sense, one of the issues referred to
3 there was something that, again, I was
4 aware of from debriefings about security
5 council committee work - that there were
6 some issues there.
7

8 Can I just ask you by way of clarification firstly, when
9 you there talk about the Security Council committee, are
10 you talking about the Security Council separately of 661?

11 A. No, sorry, the Security Council sanctions committee,
12 the 661 Committee.

13
14 Q. So you're using those terms interchangeably?

15 A. Yes.

16
17 Q. At various other stages in your evidence, if you
18 accept it from me, you referred to the sanctions committee
19 in the UN?

20 A. That's correct, the sanctions committee or the 661
21 Committee. I was referring to the same thing.
22

23 Q. As encompassed by your phrase here "Security Council
24 committee work"?

25 A. Yes, although the Security Council - yes, in that
26 sense it's the Security Council sanctions committee work.
27 That's correct.
28

29 Q. So, again, your debriefing on this issue in a very
30 broad sense comes from the chairperson of the committee?

31 A. That's correct, the debriefings on the Security
32 Council sanctions committee came from the - generally
33 came - as far as I can recall, came from the chair of the
34 sanctions committee.
35

36 Q. Would you be routinely briefed after meetings of the
37 661 Committee?

38 A. No, I wouldn't say "routinely". I'd say periodically,
39 when the briefings were offered and when - yes, when we
40 attended them.
41

42 Q. When they were offered to you?

43 A. They were offered to the UN membership.
44

45 Q. Yes. Would they take place jointly with other member
46 nations, or individually?
47

1 THE COMMISSIONER: I think we've been over all this,
2 Mr Carter. Mr Agius asked a lot of questions about this
3 and the witness gave answers.

4
5 MR CARTER: I did go over the evidence last night, sir --

6
7 THE COMMISSIONER: My recollection is that the witness
8 said that, after these meetings, there were the briefings;
9 sometimes she went to them, sometimes she didn't. Other
10 member nations would go along if they wished. Sometimes
11 they were given notice of what was going to be discussed,
12 sometimes they weren't - that line of area I thought was
13 covered.

14
15 MR CARTER: Q. You were asked in respect of the
16 documents whether you were aware that any of the matters
17 that you did have some broad familiarity with had any
18 connection with the Australian Wheat Board and whether you
19 were aware of any connection with the company Alia, and you
20 said in answer to those questions no, you weren't, but you
21 also indicated at one stage only to the extent that you've
22 already covered in your evidence.

23 A. Yes, I think I said that.

24
25 THE COMMISSIONER: Where is this?

26
27 MR CARTER: Transcript 4486, line 18.

28
29 Q. This is in the course of questioning as to document 6.
30 You were asked:

31
32 Were you aware of them in connection with
33 the AWB Limited?

34
35 Your answer was:

36
37 Only to the extent that I've already
38 covered in my evidence.

39
40 My question is simply which evidence was it that you were
41 referring to.

42
43 MR ROBERTSON: With respect, Mr Commissioner, I don't
44 think the witness can answer that.

45
46 THE COMMISSIONER: That's right. I reject that question.

47

1 MR AGIUS: Mr Commissioner, there's an earlier reference
2 to Ms Moules' evidence concerning debriefings. It can be
3 found in Mr Judd's examination of the witness at page 4490
4 and page 4491. There may be other references. I'm still
5 looking.

6

7 MR CARTER: Yes, but what you said earlier,
8 Mr Commissioner, was that Mr Agius asked a lot of
9 questions --

10

11 THE COMMISSIONER: I may have got the person's name wrong,
12 but the substance of what I said I think was right.

13

14 MR CARTER: Q. Is it the case, Ms Moules, that in the
15 debriefings that you had with the sanctions committee your
16 attention was drawn to the fact that members of that
17 committee had reason to believe that payments were being
18 made outside sanctions?

19 A. No, I don't believe that was conveyed in a specific
20 Security Council committee debriefing.

21

22 Q. Was it conveyed to you at all?

23 A. I think, as I've already said, in some of my
24 discussions with the Norwegian mission in its capacity as
25 sanctions committee chair, they referred to their - the
26 fact that the sanctions committee was looking into some of
27 these issues.

28

29 Q. Would you just remind me of when that was, at least
30 roughly?

31 A. That was in the context of inquiries we received, the
32 efforts we made to ascertain the Security Council
33 committee's view on port fees. I think it was in early
34 2001.

35

36 Q. I'm not talking here, strictly speaking, about
37 debriefings by members of the sanctions committee, or the
38 chair of that committee, but were you also briefed about
39 what occurred in meetings of that committee by Felicity
40 Johnston?

41 A. No, I was not.

42

43 Q. Did she discuss with you her attitude to allegations
44 as to payments outside the Oil-for-Food Program?

45

46 MR ROBERTSON: Could I take a general objection,
47 Mr Commissioner. My understanding was that this witness

1 was brought back specifically to deal with exhibit 584,
2 rather than for my learned friends to have another general
3 examination of this witness. In my respectful submission,
4 unless it relates to exhibit 584, the questions shouldn't
5 be allowed.

6
7 THE COMMISSIONER: I think that's right.

8
9 MR CARTER: Well, it's related to the evidence that was
10 given with respect to the secret documents, that evidence
11 being given at a time prior to the creation of the exhibit.

12
13 THE COMMISSIONER: But the question you asked related to
14 whether or not Ms Johnson had communicated to this witness
15 something which might have been discussed in the sanctions
16 committee in relation to breaches of sanctions. That's not
17 related, I don't think, to exhibit 584, is it?

18
19 MR CARTER: The difficulty, sir, is that the witness has
20 gone through that exhibit and said that she's not aware of
21 any of it.

22
23 THE COMMISSIONER: Quite.

24
25 MR CARTER: Even though we're told that's a distillation
26 of the documents about which five of them --

27
28 THE COMMISSIONER: Distillation of the documents relating
29 to matters the subject of this inquiry, Mr Carter, as I've
30 said.

31
32 MR CARTER: I accept that, sir. I'll move on.

33
34 Q. Did you make notes of the debriefings that you had
35 with the sanctions committee?

36 A. I would have made notes of pertinent issues, things
37 that were of particular relevance or interest, yes.

38
39 Q. What was the purpose of you attending the debriefings?
40 What was the point of it?

41
42 THE COMMISSIONER: Mr Carter, I think you are infringing a
43 little. We have covered this. I just point it out it was
44 Mr Judd who did it, and did it thoroughly, if I may say so.
45 Why do we need to go over it again?

46
47 MR CARTER: If you'd just allow me a little tolerance,

1 sir. It's just a couple of questions.

2

3 THE COMMISSIONER: To what point?

4

5 MR CARTER: Well, to clarify what the point is of an
6 officer whose evidence is otherwise that the function was
7 that of a post box in respect of contract approvals, what
8 the point is on being debriefed by the committee that signs
9 off on the approvals.

10

11 THE COMMISSIONER: Yes. No, I'll reject the question.

12

13 MR CARTER: I'm wondering where we're at with respect to
14 documents 16 and 17.

15

16 THE COMMISSIONER: Mr Orr?

17

18 MR ORR: We're still obtaining instructions,
19 Mr Commissioner. But it shouldn't take much longer.
20 Perhaps we could have a break.

21

22 THE COMMISSIONER: I'll take a brief adjournment.

23

24 SHORT ADJOURNMENT

25

26 THE COMMISSIONER: What's the position, Mr Orr?

27

28 MR ORR: Mr Commissioner, we press our public interest
29 immunity claim in relation to those two documents. If I
30 could briefly just say that that's on the basis that the
31 documents do disclose information about the nature of
32 intelligence, the agency, the capability of the agency and
33 its interests at the time.

34

35 If I could just propose a way forward. In our
36 original statutory declarations, both the open statutory
37 declaration which is before the Commission and the secret
38 statutory declarations which supported the original claim
39 of public interest immunity, as I understand it these
40 documents weren't in play at that time, so we would seek
41 the ability to put on a further statutory declaration
42 dealing with these documents, which, as the Commission has
43 noted, are in a different form from the other documents.

44

45 The other thing we can investigate, Mr Commissioner,
46 is whether a redacted version of these two documents will
47 be provided. That's something that will take us a little

1 time to get instructions and do.

2

3 THE COMMISSIONER: When can you do that by?

4

5 MR ORR: We should be able to do that by tomorrow,
6 Mr Commissioner, but today we're unable to do that. But I
7 do note that in relation to this particular witness she has
8 said that she had not seen this document and therefore, in
9 relation to this witness, it's difficult to see what other
10 evidence she can be providing in relation to --

11

12 THE COMMISSIONER: That may be so, but that doesn't
13 resolve the problem.

14

15 MR ORR: No, it doesn't resolve the longer problem,
16 because there may be other witnesses which are in another
17 category, Mr Commissioner, so we would still press on to
18 obtaining a further statutory declaration and, if we can, a
19 redacted version of the document.

20

21 THE COMMISSIONER: All right. I shall direct that by 10am
22 tomorrow morning the Commonwealth serve upon the solicitor
23 for the Commission any additional evidence it wishes to
24 advance in support of a claim for public interest immunity
25 in relation to documents 16 and 17 in secret exhibit 4, and
26 I'll hear any argument in that respect at 10 o'clock
27 tomorrow morning.

28

29 MR ORR: Thank you, Mr Commissioner.

30

31 THE COMMISSIONER: I would commend to you that there ought
32 to be able to be produced a redacted document which can
33 satisfy the Commonwealth's concerns related to security but
34 which otherwise could provide the substance of the
35 document.

36

37 MR ORR: That's our hope, Mr Commissioner.

38

39 MR CARTER: In light of the exchange, I seek to ask a few
40 questions, if I may, about 16 and 17, to save bringing
41 Ms Moules back yet again if it turns out --

42

43 THE COMMISSIONER: I don't think we can do that.

44

45 MR CARTER: I wasn't going to ask her about the contents
46 of the documents. All I was going to ask her was the
47 pro forma questions - and I don't mean that with any

1 disrespect - that Mr Agius asked the witness in respect of
2 the other documents. Indeed, they're questions that really
3 ought to be asked by counsel assisting, rather than me.

4
5 THE COMMISSIONER: You ask those questions and we'll see
6 how we go.

7
8 MR CARTER: The other thing in what's just fallen, and
9 your comments earlier this morning, sir, with respect to
10 documents 16 and 17, whilst I understand that you've yet to
11 rule on the various submissions that have been made with
12 respect to this issue, in my respectful submission, the
13 doubt that you yourself expressed about these documents
14 should itself, at least with respect to these two
15 documents, cause you to reconsider whether counsel can have
16 access to the documents for the sake of the argument, if
17 the Commonwealth's or if my learned friend's claim is to be
18 pressed on behalf of the security agencies.

19
20 THE COMMISSIONER: 16 and 17?

21
22 MR CARTER: Yes. I mean, you're obviously swinging on it.
23 Why shouldn't counsel be involved in the argument? It
24 seems extraordinary, with respect, sir.

25
26 THE COMMISSIONER: It is a very frequent occurrence.
27 Anyway, you go and ask the questions.

28
29 MR CARTER: Yes.

30
31 Q. Ms Moules, I'm going back to the beginning of this
32 morning, where you had confirmed that you'd not in fact
33 read document 16 prior to today?

34 A. That's correct.

35
36 Q. Can I ask you, without in any way asking you to
37 divulge the contents of the document, whether you were
38 aware in general terms of any matters contained in it.

39 A. No, I was not aware of the specific matters addressed
40 in this document.

41
42 Q. And you weren't aware of them in general terms?

43 A. It's very difficult for me to answer that. You say
44 "in general terms". There are - it's extremely difficult
45 to answer without reference to it, but in very general
46 terms there are some words in this that I have seen in
47 other contexts, but, no, I have not seen this document,

1 I've not seen the issues specifically addressed. It really
2 depends what you mean by "general terms".

3

4 Q. Well, when I say that, I'm really using some of the
5 language that you used when you were asked about documents
6 1 to 15 by Mr Agius, and we've been over some of that
7 earlier. I'm really just asking does the same go for this
8 document in any way?

9 A. The answer is no.

10

11 Q. Could I ask you to have a look at what I understand is
12 the final tab - 17. Have you seen that document prior to
13 today?

14 A. No, I haven't.

15

16 Q. If you just take a moment to have a look at it. I
17 don't want to be critical, Ms Moules, but you say that, as
18 with the previous document, you've seen neither of them
19 prior to today?

20 A. That's correct.

21

22 Q. Yet you were able to tell me that before you paused to
23 read the documents?

24 A. From glancing at this document I could confirm
25 immediately that I had not seen it before.

26

27 Q. All right. I'm simply asking the same questions as on
28 document 16: were you familiar in general terms with the
29 subject matter of it at all?

30 A. Not specifically, no.

31

32 Q. Generally?

33 A. I would say in the broadest terms possible there are
34 some words in this that I have seen in other contexts.

35

36 Q. If I could be permitted to ask just one final
37 question: in terms of the receipt of intelligence
38 information by you when you were working in New York, would
39 that ordinarily come directly or via DFAT?

40 A. I'm not sure I'm - that may raise some sensitivities.
41 I'm not sure I can answer that. I'd need to seek advice.

42

43 MR CARTER: It's simply a question about the manner of
44 transmission of material, sir, about which I understand
45 we're going to hear some evidence down the track. It
46 doesn't seek to identify agencies; it's just a general
47 question as to the way in which intelligence assessments

1 are transmitted.

2

3 THE COMMISSIONER: Yes.

4

5 MR ORR: Mr Commissioner, the problem with the question is
6 that the answer may disclose specific information,
7 notwithstanding that that question is a general question.
8 Mr Commissioner, the answer might provide some specific
9 information. Perhaps the question could be reformed.

10

11 MR CARTER: Commissioner, we know from the public
12 affidavits that they're directed towards Australia's six
13 intelligence agencies. It's important that we not be too
14 precious about it, whilst at the same time being conscious
15 of legitimate national security concerns. I'm simply
16 asking whether this witness, being based in New York, would
17 receive intelligence directly from any one of those six
18 agencies which are publicly known, or whether it would come
19 to her via some filter from DFAT Canberra.

20

21 THE COMMISSIONER: Yes, I'll allow the question.

22

23 MR CARTER: Thank you, sir.

24

25 Q. Do you want the question again, or do you understand
26 it?

27

28 A. If you could ask the question again.

29

30 THE COMMISSIONER: Q. If you received intelligence
31 information, was it forwarded to you by an intelligence
32 agency or was it forwarded to you via DFAT whilst you were
33 in New York?

34

35 A. My understanding --

36

37 Q. Or both?

38

39 A. I don't think I know enough about the handling of the
40 way the material was forwarded to give you a definitive
41 answer on that. I have an understanding, but I'm not - I
42 don't have a first-hand awareness of how that process
43 worked, so I would hesitate to give you an answer.

44

45 MR CARTER: Q. Well, can I just ask you this --

46

47 THE COMMISSIONER: What does all this go to anyway,
48 Mr Carter? How will the mechanics of how it's transmitted
49 help us?

50

1 MR CARTER: Well, thus far, Commissioner, of course, we've
2 traversed very little of this. It may become important in
3 the final analysis.

4
5 THE COMMISSIONER: How?

6
7 MR CARTER: Well, it may be relevant to questions of
8 dissemination and level of dissemination of important
9 matters.

10
11 THE COMMISSIONER: No, we're talking about mechanics. Why
12 is the mechanics relevant? The fact of dissemination may
13 be relevant; I don't understand how the mechanics can be.

14
15 MR CARTER: Well, the mechanics in real ways, sir, may
16 help to explain the evidence that's given with respect to
17 dissemination and how credible it is.

18
19 THE COMMISSIONER: No, I reject the question.

20
21 MR CARTER: Thank you for your time, Ms Moules.

22
23 MR AGIUS: Mr Commissioner, before anybody else rises,
24 there is a matter that I should draw to attention that came
25 to my attention only after I had tendered this morning the
26 40 additional statutory declarations which have been marked
27 as a confidential exhibit. As I understand it, we've now
28 distributed those exhibits to those with authorisation to
29 appear who are in the hearing room. Amongst them is a
30 further statutory declaration from this witness which deals
31 with cables. In the statutory declaration Ms Moules'
32 attention is drawn to a number of cables which are referred
33 to in an annexure, and we have separate copies of the
34 annexure. There was a standard annexure issued apparently
35 to a number of DFAT employees, or former employees, and
36 their evidence in relation to the distribution of the
37 cables referred to in the annexure is recorded in their
38 statutory declarations.

39
40 Ms Moules has provided such a statutory declaration
41 dealing with such subject matter. I've read the statutory
42 declaration. For my part, it seems to be entirely
43 consistent with the evidence that she has given and refers,
44 to the extent to which it's relevant, to the cables of
45 which she's already given evidence. But my learned friends
46 ought to have an opportunity to look at that statutory
47 declaration and the annexure and to satisfy themselves that

1 they have no questions of Ms Moules based upon that. We'd
2 like them to do that in the course of today, if that's
3 possible, so we have some prospect of not having to recall
4 Ms Moules, if we can avoid that. It's a very short
5 statutory declaration.

6
7 MR LACAVA: We don't wish to cross-examine Ms Moules.

8
9 THE COMMISSIONER: Mr Judd?

10
11 MR AGIUS: I should tender the statutory declaration,
12 together with a copy of the schedule, and have it marked as
13 a public exhibit.

14
15 THE COMMISSIONER: I'll mark the statutory declaration of
16 Ms Moules, which was previously confidential exhibit 261C,
17 exhibit 635.

18
19 EXHIBIT #635 STATUTORY DECLARATION OF BRONTE MOULES,
20 PREVIOUSLY CONFIDENTIAL EXHIBIT 261C,
21 BARCODED DFT.0020.0067-0070

22
23 MR AGIUS: We have copied the annexure A from another
24 statutory declaration. I understand from DFAT legal
25 representatives the annexures are the same. It's the same
26 annexure A to every statutory declaration. Can I tender it
27 as a generic annexure A. It's DFT.0020.0095. I tender
28 that as a public exhibit.

29
30 EXHIBIT #636 ANNEXURE A TO CONFIDENTIAL STATUTORY
31 DECLARATIONS, BARCODED DFT.0020.0095

32
33 MR AGIUS: I can indicate, having read that in the short
34 adjournment, I have no questions for Ms Moules in relation
35 to that additional statutory declaration, which, for the
36 record, I will define as DFT.0020.0067 through to and
37 inclusive of 0070.

38
39 THE COMMISSIONER: Mr Judd?

40
41 MR JUDD: I was going to say, sir, if we can have a copy
42 of annexure A, we could respond immediately after lunch.

43
44 THE COMMISSIONER: Yes.

45
46 MR JUDD: We don't have any questions of Ms Moules in
47 relation to the matters about which she's been recalled

1 today.

2

3 THE COMMISSIONER: Very well. Would you mind standing
4 down until 2 o'clock, Ms Moules?

5

6 THE WITNESS: Yes.

7

8 THE COMMISSIONER: Could people consider their position
9 between now and 2 o'clock in relation to that further
10 statutory declaration, exhibit 635.

11

12 <THE WITNESS WITHDREW

13

14 MR AGIUS: I understand that when I rose I may have cut
15 off my learned friend who is appearing in the interests of
16 Rhine Ruhr.

17

18 MS GOAD: Elizabeth Goad, I appear for Rhine Ruhr. I just
19 wanted to clarify that thus far matters that we had an
20 interest in raising this morning have been addressed by
21 Mr Carter. However, we are still looking at this further
22 statutory declaration.

23

24 THE COMMISSIONER: Thank you, Ms Goad. We'll deal with
25 that at 2 o'clock.

26

27 MR AGIUS: I understand some of my learned friends have
28 questions of Mr Cuddihy. I'll recall him. Am I right that
29 somebody wishes to ask Mr Cuddihy further questions?

30

31 MR LACAVA: We don't.

32

33 MR CARTER: We do. We've joined in Mr Winneke's
34 application for that.

35

36 MR ROBERTSON: He's on his way. He'll be here within a
37 minute, I hope.

38

39 MR JUDD: While Mr Cuddihy is coming, might I ask if it's
40 possible to have a bundle of the cables referred to in
41 annexure A?

42

43 THE COMMISSIONER: The 21 cables?

44

45 MR JUDD: The 21 cables. If it's in existence as a bundle
46 and can be readily copied, it will assist. Otherwise --

47

1 MR AGIUS: I'm afraid I don't have that yet, but I
2 acknowledge that we will have to produce such a bundle.

3
4 <DONALD JAMES CUDDIHY, on former affirmation: [12.16pm]

5
6 THE COMMISSIONER: Q. Mr Cuddihy, you're on your former
7 affirmation.

8 A. Yes, I understand that.

9
10 MR AGIUS: Mr Commissioner, I had examined Mr Cuddihy in
11 relation to all 17 documents. I have no further questions.

12
13 THE COMMISSIONER: Yes, Mr Carter.

14
15 <EXAMINATION BY MR CARTER:

16
17 MR CARTER: Q. Mr Cuddihy, sorry to have you back, but
18 there's a document that was created after you left us. If
19 we could bring up, please, exhibit 584, the distillation of
20 secret exhibit 4.

21
22 THE COMMISSIONER: Is there a hard copy the witness can
23 have to read?

24
25 MR AGIUS: I can provide my copy.

26
27 MR CARTER: Q. Have you seen that document yet,
28 Mr Cuddihy, the one that's on the screen?

29 A. I was shown it during the preparation for this
30 appearance.

31
32 Q. Can I just ask you, in general terms, if I can deal
33 with it generally to start with, did you have knowledge of
34 the unassessed intelligence that is referred to in that
35 document?

36
37 THE COMMISSIONER: In all paragraphs?

38
39 MR CARTER: Yes, I'm asking generally.

40
41 THE WITNESS: Well, I've read this document and there is
42 nothing in this document I had knowledge of until I - prior
43 to my preparation for this inquiry - nothing that's
44 referred to in this document.

45
46 MR CARTER: Q. Right. When you say "preparation for
47 this inquiry", I take it you mean the preparation of your

1 two statutory declarations, or do you mean preparation for
2 coming back for round 2 today?
3 A. Well, I was shown the - I think it's referred to as
4 secret exhibit 4.
5
6 Q. Yes.
7 A. I think that would have been after I prepared my two
8 statutory declarations, certainly after I prepared the
9 first one, and prior to seeing secret exhibit number 4 I
10 don't believe I'd seen any of the documents comprising that
11 exhibit before.
12
13 Q. Okay. When you were asked, for example, about the
14 document that was behind tab 3, at transcript 4668, line
15 24, you stated:
16
17 A. I haven't seen that document beyond the
18 general issue.
19
20 A. Correct.
21
22 Q. What did you mean by that?
23 A. Well, maybe I may have phrased that poorly. It would
24 help if I could see the actual document. I may have meant
25 that I wasn't aware of anything in that document beyond the
26 general issue, but if I can refer to tab 3, please?
27
28 Q. Certainly.
29 A. Well, I was aware of the general issue, if you like,
30 that's referred to by that document, and, as I say, I would
31 have seen that document during the preparation for this
32 inquiry. I was shown these documents.
33
34 Q. But you say that general issue is not within the
35 document that you went to - exhibit 584, the distillation
36 of secret exhibit --
37 A. No, that general issue is not referred to in the
38 distillation, no. I may have misled people.
39
40 Q. No, not at all, sir. When you were asked about tab 8
41 at transcript 4669, line 20 and following, you were asked
42 whether you'd seen the document. You said you didn't
43 believe so, you certainly don't recall seeing it.
44 A. Mmm-hmm.
45
46 Q. I take it from that that you don't rule out that you
47 may have seen it?

1 A. Can I clarify we're talking about tab 8?

2

3 Q. Yes.

4 A. I think it's very unlikely that I would have seen it.
5 I certainly can't say I definitely recall never seeing this
6 document, but this sort of material would not normally come
7 to me unless it was specifically drawn to my attention. I
8 can't recall the issue it deals with ever being drawn to my
9 attention.

10

11 Q. You were then asked in respect of that document, at
12 line 25:

13

14 Q. Were you otherwise aware of the
15 content or substance of that document?

16

17 Your answer was:

18

19 A. No, I'm not aware of that at all. I'm
20 aware of part of one of the issues referred
21 to here, but not I think the one that
22 you're interested in, Mr Agius.

23

24 A. Yes, I can see that.

25

26 Q. You went on to say:

27

28 It's a bit difficult to explain that, given
29 the constraints we face.

30

31 A. Yes.

32

33 Q. You were then asked:

34

35 Q. Perhaps you could answer this
36 question, then: of that part of it, or the
37 issue that that part of it raises, that you
38 were aware of, were you aware of it in
39 connection with AWB Limited?

40

41 You answered:

42

43 A. Again, there was a general issue there
44 which affected quite a few people doing
45 business with Iraq. Are we talking
46 about --

47

1 The Commissioner states:

2

3 Q. The question you were asked was in
4 relation to AWB.

5

6 You say:

7

8 A. Well, yes, but, again, I don't think
9 it's a thing that you're particularly
10 interested in here.

11

12 A. That's correct, yes. I'm now recalling what the issue
13 I was referring to was.

14

15 Q. Do I take it from the answer that you gave at line 36
16 on that page, if you have the transcript back up in front
17 of you --

18

A. Mmm-hmm.

19

20 Q. -- that what you were conveying is that an issue in
21 that document did relate generally to people doing business
22 with Iraq?

23

24 MR ROBERTSON: Could I rise to say, Mr Commissioner, that
25 I think lines 5, 6 and 7 on the next page, 4670, are also
26 relevant to this document. It might shorten things if
27 Mr Cuddihy looks at that as well.

28

29 THE COMMISSIONER: Yes.

30

31 MR ROBERTSON: My recollection is they were.

32

33 MR CARTER: I accept that. I've been confused because the
34 question over the page is about card 9. That's right.

35

36 THE WITNESS: I was probably trying to be too
37 comprehensive in my answer. I'm sorry.

38

39 MR CARTER: Q. Well, the general issue that you were
40 aware of in the passage that my learned friend correctly
41 draws to my attention, that was an issue that related to
42 people doing business in Iraq?

43

A. Correct, yes.

44

45 Q. Including Australian companies?

46

A. Correct, yes.

47

1 Q. Including the AWB?

2 A. I'd imagine that the issue would have affected the
3 AWB.

4
5 Q. You were then asked later, on transcript page 4670,
6 about document 10. You said you didn't believe you'd seen
7 that document before.

8 A. Correct, that's what I said, yes.

9
10 Q. Do I take it from that, Mr Cuddihy - please correct me
11 if I'm wrong - that you might have seen that document or
12 other documents like it?

13 A. I was aware - I think I may have indicated, I was
14 aware of some of the issues raised in some of these
15 documents. I do not recall - I can't recall specifically
16 how I became aware of them. It's possible that I was shown
17 documents like this and that's how I became aware of those
18 issues. Some of them were also issues in the public
19 domain. I doubt - it would be very rare that I'd see this
20 category of documents at all, and I certainly don't - none
21 of them actually - I can't say, "Oh, I remember reading
22 this one". That hasn't sort of - nothing in them I've seen
23 has made me think that I might have seen this particular
24 document.

25
26 Q. You went on in your answer to questions about that
27 document, at line 38 on page 4670, to say that the document
28 was a very long document dealing with quite a few issues.
29 Then you stated you could see something in here that didn't
30 refer to AWB, this aspect of this that we're aware of:

31
32 Again, it's possibly the first three lines
33 of the summary of that document.

34
35 I want to be clear: should the transcript record there it
36 did refer to AWB?

37 A. I'm sorry, I was reading this, I should have been
38 listening to your question, but the issue I've raised - I'm
39 just looking at the first three lines of the summary
40 then --

41
42 THE COMMISSIONER: I think the transcript is correct.

43
44 MR CARTER: I wasn't taking issue with the transcript, I
45 was just clarifying the evidence.

46
47 MR AGIUS: If we go to lines 11, 12, 13 and 14 on the next

1 page, it's apparent that the transcript is correct.

2

3 MR CARTER: Q. At page 4671, going on to page 4672, you
4 were asked about the document behind tab 13. You stated at
5 line 44 on page 4671 that you were aware of the issue
6 covered in the final sentence of the summary.

7 A. Yes, I can see that.

8

9 Q. Then you were asked:

10

11 Were you aware of that issue in relation to
12 AWB Limited?

13

14 Your answer was:

15

16 No, I wasn't. Well, can I say the bit
17 after the first comma in the final
18 sentence. It's referred to in my second
19 statutory declaration.

20

21 A. That hasn't come up on the screen, but I think I can
22 remember saying that, and I probably shouldn't have, in the
23 sense that I shouldn't say anything that reveals the
24 remarks indicated in these documents.

25

26 Q. But it was the truth, what you said in that answer,
27 was it not, Mr Cuddihy?

28 A. If I can just read it again. I'm sorry, could you
29 repeat the question? Are you saying - my answer to which
30 particular question, please?

31

32 Q. I was simply reminding you of what your evidence was
33 at the bottom of 4671 and the top of 4672.

34 A. Yes.

35

36 Q. After I'd done that, you said it hadn't come up on
37 your screen, but you think you can remember it; you
38 shouldn't have, in the sense that you shouldn't say
39 anything revealing the remarks indicated in these
40 documents.

41 A. Yes.

42

43 Q. Then I asked you, "But it was the truth, what you said
44 in that answer, was it not, Mr Cuddihy?" The answer that
45 I'm referring to is where you say:

46

47 Well, can I say the bit after the first

1 comma in the final sentence. It's referred
2 to in my second statutory declaration.
3
4 A. If I can just check. The first comma in the final
5 sentence - yes, it is the truth. Oh - yes.
6
7 MR CARTER: You've ruled, sir, already that I can't ask
8 him where in the second statutory declaration.
9
10 THE COMMISSIONER: I have.
11
12 MR CARTER: Q. In respect of document 15, at transcript
13 4672, line 40, you stated that you were aware of the issue
14 in the final two sentences in paragraph 2 on the second
15 page.
16 A. I can see where I've said that, yes.
17
18 Q. You went on to say that you were not aware of that
19 issue in connection with AWB.
20 A. Correct, I can see that.
21
22 Q. If you could go back to exhibit 584 - I'm not sure
23 what's on your screen at the moment --
24 A. Mmm-hmm.
25
26 Q. -- Leaving aside the folder of secret documents, you
27 can close that now, I don't have any other questions --
28 A. Yes, thank you.
29
30 Q. -- do you agree or disagree that you saw other
31 documents in the period that your statutory declarations
32 relate to relating to the same subject matter?
33
34 THE COMMISSIONER: What does that mean? I don't
35 understand the question.
36
37 MR CARTER: Q. Did you see other documents that raised
38 the contents of paragraphs 1 to 8 of the distillation of
39 secret exhibit 4?
40
41 MR ROBERTSON: I object to that question, Mr Commissioner.
42 It's far too broad.
43
44 THE COMMISSIONER: Yes, I think you'll have to be more
45 specific.
46
47 MR CARTER: Q. Did you see other intelligence documents

1 that, for example, indicated that by March of 2001
2 endeavours were being made by Iraq to breach sanctions by
3 collecting commission on contracts for humanitarian goods
4 imported into Iraq under the Oil-for-Food Program?

5 A. I cannot recall seeing any such documents, and I
6 suspect that I would have registered that as an issue, so I
7 can say with some confidence I'm pretty sure I haven't seen
8 such a document - seen such intelligence reports.

9
10 Q. I'll just deal with another example. Did you become
11 aware of intelligence indicating that, by September of
12 2001, inland transport fees for humanitarian goods,
13 including fees paid through Alia, were proposed to be
14 increased substantially by Iraq?

15 A. I'm certain that I didn't.

16
17 Q. You'd accept that, in the position that you held, you
18 would routinely receive both assessed and unassessed
19 intelligence?

20 A. Oh, no way - not routinely.

21
22 Q. Often?

23 A. Almost never. It would have to be drawn to my
24 attention. The only time I would see such material
25 routinely was if I was acting in the position of my
26 supervisor --

27
28 Q. All right. Can I just --

29 A. -- which I rarely did.

30
31 Q. If I could just conclude, sensing that I'm about to be
32 prevented from asking anything else, your job was
33 intimately bound up with contract approval and the issue of
34 permission to exports whilst the Oil-for-Food Program was
35 on foot?

36 A. My job did not involve contract approval. It did
37 involve the issue of export permissions.

38
39 Q. You had an interest in contracts and exports occurring
40 in such a way that sanctions were not breached?

41 A. That was my understanding, yes.

42
43 Q. Would you regard it as important to your position that
44 if other agencies of the Australian government held
45 information raising issues as to breach, you were informed?

46 A. I'd think that it was important that I be informed,
47 but it would not be my decision. The distribution of

1 intelligence material was not my decision to make. Other
2 people made the decision and would have drawn it to my
3 attention if they thought it was necessary. I couldn't,
4 for example, request intelligence information off my own
5 bat. I'd be told - that's something I wouldn't ask, you
6 should know not to ask in my position.
7

8 Q. There was some evidence from Mr Bowker that he
9 requested some off his own bat.

10 A. Mr Bowker was my superior. He was - people at
11 Mr Bowker's level would normally receive some intel
12 material. I'm not sure just how the distribution of that
13 material is determined, but people at his level would seek
14 it on a routine basis, not necessarily a regular basis, but
15 they would normally get to see it. But not my level. It
16 would have to be drawn to your attention, perhaps by
17 Mr Bowker or his superior.
18

19 MR CARTER: Thank you very much, Mr Cuddihy.

20
21 THE WITNESS: A pleasure.

22
23 THE COMMISSIONER: Does anybody else have questions of
24 Mr Cuddihy.
25

26 MS GOAD: Sir, the matters we sought to address with this
27 witness have been adequately dealt with by Mr Carter.
28

29 THE COMMISSIONER: Thank you. Mr Agius?

30
31 MR AGIUS: There's nothing arising, thank you,
32 Mr Commissioner.
33

34 THE COMMISSIONER: Thank you, Mr Cuddihy, you're excused.
35

36 THE WITNESS: Thank you, commissioner.
37

38 <THE WITNESS WITHDREW
39

40 MR JUDD: Commissioner, if it's helpful, we've had an
41 opportunity to look at the subsequent statement of
42 Ms Moules and we've been able to identify the cables that
43 are not addressed in the previous statements and we
44 wouldn't require leave to ask her any further questions.
45

46 THE COMMISSIONER: Thank you.
47

1 MR CARTER: Commissioner, you'll be relieved to hear that
2 the same goes for me.

3

4 THE COMMISSIONER: Thank you. It doesn't cause me any
5 relief at all.

6

7 MR CARTER: It may cause Ms Moules some relief.

8

9 THE COMMISSIONER: I doubt that as well. Does anybody
10 else wish to ask Ms Moules any questions?

11

12 MS GOAD: We're satisfied in relation to the evidence.

13

14 THE COMMISSIONER: Thank you. Could somebody tell
15 Ms Moules that she's not required at 2 o'clock?

16

17 MR AGIUS: Thank you, Mr Commissioner. That is the
18 evidence that we have available to call today. Would you
19 excuse me for a moment.

20

21 THE COMMISSIONER: Yes. Mr Robertson, are you
22 anticipating there will be more DFAT statements, or not?

23

24 MR ROBERTSON: In terms of what Mr Agius was speaking of
25 this morning, there will be some, but of a routine nature
26 and which, as Mr Agius indicated, will be in the hands of
27 solicitors assisting by the end of Friday.

28

29 THE COMMISSIONER: Right. Thank you.

30

31 MR ROBERTSON: But they are, as Mr Agius indicated, almost
32 entirely of a negative nature - that is, "I wasn't
33 involved" or "I didn't see a particular cable".

34

35 MR CARTER: Commissioner, could I just raise one matter
36 that flows from that? Mr Forrest and I had intended to
37 raise several issues about the aspect of the inquiry
38 dealing with the knowledge of the Commonwealth, which we
39 now will not raise, given that, as I understand it,
40 effectively, that's been put on hold until the AWB has been
41 concluded and we've just been given another 40 statements,
42 et cetera.

43

44 There is one matter that, in light of what
45 Mr Robertson just said, is important, with respect, sir.
46 When Mr Agius opened the issue of the knowledge of the
47 Commonwealth on 14 March - the transcript reference is

1 4443 - he stated, and I don't want to do any injustice to
2 the context - at line 35:

3
4 When I refer to the Commonwealth in this
5 context, I include within it, firstly,
6 officers of any relevant Commonwealth
7 department, including, of course, the
8 Department of Foreign Affairs and Trade, to
9 which I will refer as "DFAT", but also
10 including other departments; secondly,
11 officers of any other relevant Commonwealth
12 body or authority - for example, Austrade
13 and the Wheat Export Authority; and,
14 thirdly, ministers and their staff.

15
16 If it follows from what is being said that we can take it
17 that it was not intended that the relevant ministers be
18 called to give evidence, that, in the respectful submission
19 of Mr Forrest and I, is a matter that should raise some
20 concern. It would be our submission that one would have
21 expected that at least those ministers bearing ultimate
22 responsibility for contract approval, for example, would be
23 called. I just raise that as a matter for the Commission's
24 consideration.

25
26 THE COMMISSIONER: Yes, very well. Nothing further today?

27
28 MR AGIUS: Nothing I have said today has indicated any
29 view as to whether or not I have made any decision about
30 the calling of any minister. I have not said anything
31 about that and we should not be inferring one way or the
32 other that until I have seen all of the DFAT material that
33 I'm in a position to advise as to what ought to occur in
34 that regard. One ought not to read anything into what I
35 said this morning beyond the plain, ordinary English
36 meaning of the words that I spoke.

37
38 MR CARTER: Sir, I completely accept that. The reason I
39 raise it - and I do at this juncture - is that it's a bit
40 hard to assess whether we are going to seek, for example,
41 that various subordinates, if I can use that term in a
42 non-pejorative way, be called and be cross-examined in the
43 interests of our clients. If in fact ultimately the
44 ministers are to be called, it may be unnecessary to do
45 that. If we can cut to the chase, get to the people who
46 had ultimate knowledge and responsibility, it will save
47 this inquiry a lot of time and will be more efficient.

1 That's why I raise it as I do now, sir.

2

3 THE COMMISSIONER: Very well. I'll adjourn until 10am
4 tomorrow.

5

6 AT 12.45AM THE COMMISSION WAS ADJOURNED
7 TO THURSDAY, 23 MARCH 2006 AT 10AM

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