

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 Monday, 13 February 2006, at 10am

1 <CHARLES ERIC STOTT, on former oath: [10am]

2

3 <EXAMINATION BY MR AGIUS CONTINUING:

4

5 THE COMMISSIONER: You're on your former oath, Mr Stott.

6

7 MR AGIUS: Q. Mr Stott, I want to take you back, if I
8 may, to the period before the 20,000 tonne shipment of
9 wheat left Australia and to the position as it was in
10 October 1995. Was it your view prior to that shipment of
11 wheat in 1996 that AWB had, prior to then, entered deals
12 whereby wheat was shipped to Iraq and the wheat was
13 financed by third parties?

14

15

16 Q. Can you think about that: who were the third parties
17 in relation to those prior to this shipment of the 20,000
18 tonne shipment?

19

20 A. We had a shipment on - in April of 1995 that was
21 financed by Hyundai, which is a Korean company, that had UN
22 approval but it was not via the third party payment
23 approval, it was UN approval, and it was effectively a
24 third party that had financed that shipment, and it was for
25 I think US\$5m.

25

26 Q. Any others?

27

28

29 Q. Did you believe that other countries, including Libya,
30 Japan and Korea, had done similar deals; that is, they had
31 shipped wheat or other products to Iraq, where the finance
32 had been by third parties, but where the role of third
33 parties had not been disclosed to the UN?

34

35

36 Q. Did you have a view that other countries had such
37 third-party arrangements which had been disclosed to the
38 UN?

39

40

41 Q. In relation to the Hyundai matter, to the best of your
42 recollection, was that a shipment that had been financed by
43 Hyundai, but the role of Hyundai had not been disclosed to
44 the United Nations?

45

46

47

1 Q. How was it disclosed?

2 A. I don't know.

3

4 Q. What's the basis of your understanding that it had
5 been disclosed?

6 A. There was no reason not to disclose it, so I just
7 assumed it had been disclosed.

8

9 Q. Can you recall whether the contract for that sale of
10 wheat to the Iraqis disclosed that there was payment by
11 third party, or whether the contract simply indicated, on
12 its face, an arrangement between the AWB and the IGB?

13 A. It didn't - the third party payment was not discussed
14 at that time. The Hyundai cargo was a cargo financed by
15 Hyundai and they established a letter of credit, payment
16 via a letter of credit, for that, and that's what we got
17 payment through.

18

19 THE COMMISSIONER: Q. Letter of credit in whose favour?

20 A. I thought the letter of credit would have been opened
21 in our favour, AWB's favour, Australian Wheat Board's
22 favour, at that time by Hyundai.

23

24 MR AGIUS: Q. But was that fact disclosed to the United
25 Nations?

26 A. I don't know, Mr Agius.

27

28 Q. Was that disclosed to DFAT?

29 A. Yes.

30

31 Q. How was it disclosed to DFAT?

32 A. It was disclosed to DFAT - I think there just would
33 have been discussions with DFAT.

34

35 Q. Before or after the event?

36 A. Before.

37

38 Q. Were you party to those discussions?

39 A. No, Rex Lister was very proud of that cargo and he -
40 it required a lot of detailed negotiations with Hyundai of
41 Korea and also DFAT, and Rex put in place the paperwork and
42 the approval process for that cargo, and I knew Rex was
43 doing it, and I was comfortable with Rex doing it.

44

45 Q. What do you say to the suggestion that DFAT was never
46 informed that there was a third party involved in relation
47 to that shipment of wheat?

1 A. I find that surprising.
2
3 Q. Do you have any first-hand knowledge as to whether
4 DFAT was informed that there was a third party involved in
5 that shipment of wheat?
6 A. No.
7
8 Q. When you referred to Rex Lister, did he ever tell you
9 that he had told DFAT that there was a third party involved
10 in that shipment of wheat?
11 A. Rex is a very transparent person and very diligent,
12 was very diligent, and I trusted him completely. So I
13 would have relied upon his advice that, if it was in order,
14 that would have satisfied me.
15
16 Q. But my question was did he ever tell you that he had
17 told DFAT that there was a third party involved in that
18 shipment of wheat?
19 A. Yes.
20
21 Q. Did he tell you who it was at DFAT that he had told?
22 A. No.
23
24 Q. Did he tell you that he had told DFAT in writing?
25 A. No.
26
27 Q. In the ordinary course, the way in which DFAT would be
28 told would be in the application that would accompany the
29 contract; is that not right?
30 A. Yes.
31
32 Q. Because DFAT, or at least the Australian
33 administration, had to issue a certificate under the
34 customs regulations for permission to export?
35 A. Yes.
36
37 Q. Would you have understood at the time that, prior to
38 the issue of that certificate, DFAT ought to have been told
39 that a third party was involved in the transaction?
40 A. Yes.
41
42 Q. So that when the certificate issued, it ought to have
43 been issued on the basis that DFAT, or the relevant
44 government department, had been informed that there was a
45 third party involved?
46 A. Yes.
47

1 Q. If the documents in relation to that shipment of
2 wheat, where Hyundai was involved as a third party, did not
3 disclose that there was a third-party transaction, would
4 that surprise you?

5 A. Yes.

6

7 Q. Would that be inconsistent with what you were told by
8 Mr Lister that DFAT had been informed that there was a
9 third party involved in that transaction?

10 A. Yes.

11

12 MR AGIUS: We had some documents delivered to us on
13 Thursday night and Friday of last week, Mr Commissioner. I
14 am just inquiring as to whether they are yet to find their
15 way on to our court system. Could we bring up, please,
16 AWB.0100.0301.

17

18 Q. Could you read that, please, Mr Stott?

19 A. Yes, I've read that page.

20

21 Q. Have you seen the second page?

22 A. No, I can't see it. Now I can. Yes.

23

24 Q. Is that a letter that you received in November 1995?

25 A. Yes.

26

27 Q. In that letter you were told, amongst other things,
28 that proposals whereby there is a transaction involving a
29 payment for humanitarian goods for third parties were not
30 acceptable to the sanctions committee?

31 A. That's correct.

32

33 Q. That advice later changed and you were told that such
34 proposals were acceptable to the sanctions committee?

35 A. Yes.

36

37 Q. You were told that in relation to the 20,000 tonne
38 shipment that BHP financed; is that right?

39 A. Yes, there were three shipments being contemplated at
40 this point; that's right.

41

42 Q. Indeed, there was a contract for 100,000 tonnes --

43 A. Yes.

44

45 Q. -- that was approved by the United Nations on the
46 basis that there would be payment by third parties?

47 A. Yes.

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Q. I want to go to the balance of this letter, though. What you were also told in this letter is that there were three ways that Iraq could pay for humanitarian goods. The first was to pay cash. The second was a transfer of its frozen assets to the escrow account. The third was that Iraq could accept resolutions, including Resolution 986, and therefore pay for humanitarian goods - namely, wheat - in effect through the escrow account by selling oil, by having the proceeds of the sale of oil go into the escrow account and having the payments made out of that - do you agree with that?

A. Yes.

MR AGIUS: I tender that document, Mr Commissioner.

EXHIBIT #268 LETTER DATED 6/11/1995, FROM DFAT TO MR STOTT, BARCODED AWB. 0100. 0301

MR AGIUS: Q. Do you recall that in January of 1996 you, at the Australian Wheat Board, received a letter from DFAT advising on the issue of the provision of foodstuffs to Iraq under credit arrangements?

A. No.

Q. I'm just having a letter that we received on Friday copied. Whilst it's being copied, I'll provide you with the one copy that I have and ask you to read it. It's a letter of 25 January 1996 directed to yourself from MT Skelly, Director, Arabian Peninsula, Iran and Iraq Section of the Department of Foreign Affairs and Trade. Have you read through that document, Mr Stott?

A. I've read that document.

Q. Do you recall receiving that in January 1996?

A. No. I actually think I may have left the Wheat Board by the time this letter was dated.

Q. This letter is dated 25 January 1996. When did you leave the Wheat Board?

A. In January 1996. I don't - I'm not sure of the precise date in January 1996.

Q. Well, we have a letter from you to Mr Bowker at DFAT dated 2 February 1996.

A. Signed by me at the Wheat Board?

1 Q. I'm just having it copied. Do you say you never
2 received this letter, the letter of 25 January 1996?
3 A. Yes. I say I've never received that letter while I
4 was at the Wheat Board.

5
6 Q. Did you receive it later?
7 A. No.

8
9 Q. Were you aware of the contents of the letter?
10 A. No.

11
12 MR AGIUS: I'll tender that letter of 25 January 1996.

13
14 EXHIBIT #269 LETTER FROM MT SKELLY, DIRECTOR, ARABIAN
15 PENINSULA, IRAN AND IRAQ SECTION, DEPARTMENT OF FOREIGN
16 AFFAIRS AND TRADE TO MR STOTT, DATED 25/1/1996

17
18 MR AGIUS: Q. Would you look at this fax of 2 February
19 1996, which appears to have been signed by somebody for
20 you. I'm having copies made of that. Have you read the
21 fax, Mr Stott?

22 A. I have read the fax.

23
24 Q. Did you authorise that?
25 A. No.

26
27 Q. Do you say that fax was sent without your authority?
28 A. Yes, after I left the company.

29
30 MR AGIUS: I tender that, Mr Commissioner.

31
32 EXHIBIT #270 FAX SIGNED ON BEHALF OF MR STOTT,
33 DATED 2/2/1996

34
35 MR AGIUS: Q. What date did you leave the company?

36 A. I don't recall precisely, but it would be on my HR
37 files, I'm sure, but I thought it was in late January. I
38 certainly wasn't there in February, when this document was
39 sent. It's not signed by me, someone has signed it for me.

40
41 Q. But you say you definitely didn't authorise it?
42 A. Definitely didn't authorise it.

43
44 Q. When you left, was there a proposal within AWB that
45 the advice that is sought in that fax be sought from DFAT?
46 A. Not that I'm aware.

47

1 Q. We have another fax. This one purports to be signed
2 by you. It's dated 12 February 1996 from the AWB to the
3 Department of Foreign Affairs and Trade. I'll just have a
4 copy made of it. Would you look at this fax, please. Is
5 that your signature?

6 A. That is my signature.

7
8 MR AGIUS: I tender that document.

9
10 EXHIBIT #271 FAX FROM AWB TO DEPARTMENT OF FOREIGN AFFAIRS
11 AND TRADE, DATED 12/2/1996

12
13 MR AGIUS: Q. Do you acknowledge that it's dated
14 12 February 1996?

15 A. Yes, I acknowledge that.

16
17 Q. It says:

18
19 Dear Bob,
20 We wish to advise that we have concluded
21 further business to Iraq for shipment in
22 February 1996 in line with the UN approval
23 dated 28 November 1995...

24
25 And you go on to refer to the chartering of the vessel
26 Tiger Island, and the proposal that it load up to
27 33,000 metric tonnes, and it requests an authority. This
28 was 33,000 tonnes which fell under the first contract for
29 100,000 tonnes, was it not?

30 A. I know nothing of this letter, Mr Agius.

31
32 THE COMMISSIONER: Q. You signed it.

33 A. I don't think I signed this letter. I think that's my
34 signature. I think this letter is a forgery.

35
36 MR AGIUS: Q. Sorry, Mr Stott, I just don't follow that.
37 It's your signature, but the letter has been forged?

38 A. Yes, I've not written this letter. I've not seen this
39 letter. This is the first time in my life I've seen this
40 letter. This letter is not - it is my signature on the
41 letter, but it is not a matter that I know anything about.

42
43 Q. How could you have signed it?

44 A. I don't think I have signed it. I think my
45 signature's appeared on the letter in some - in some form.
46 Someone has put my signature on the letter, but I haven't
47 signed this letter.

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Q. Do you see the form of your signature on the facsimile?

A. Yes.

Q. Did you have some rubber stamp or electronically recorded form of signature which was available within AWB for use?

A. I do now, but I don't - I wouldn't have thought that we had that technology in 1996, and it's not normal for me to sign a letter on the right-hand side. I usually sign it under the "Best regards" above my name, and not to the right-hand side of it. So this is --

Q. There's no space under "Best regards" and your name for a signature.

A. Well, normally, if someone's prepared a document, I'd ask them to create space, because I don't - I wouldn't do that.

Q. How could your signature be on the letter if you didn't actually affix it?

A. I've got no idea, Mr Agius.

THE COMMISSIONER: Q. Are you certain you left in January 1996?

A. Yes.

MR AGIUS: Q. Did you leave before the shipment left Australia?

A. This Tiger Island, or the --

Q. No, the first shipment.

A. What was the bill of lading date of the Ikan Sepat?

MR LACAVA: It's exhibit 199, Commissioner, AWB.0129.0075.

MR AGIUS: Q. The letter that's on the screen is dated 7 June 1996. That was sent whilst you were at BHP. The bill of lading that we have was issued on 26 January 1996 at Melbourne. Does that assist you?

A. No, I thought I left - I thought I left AWB in January - late January 1996, but I'm sure my HR file would show the date that I left, and I haven't looked at that in the context of this inquiry.

Q. The Australian Wheat Board invoice is dated 29 January

1 1996?

2 A. Yes.

3

4 Q. So, to the best of your recollection, you would say
5 that you were gone from AWB by 12 February and that you did
6 not sign that document at a time when it bore the
7 type-printed material that it now bears - that's the fax of
8 12 February?

9 A. That's to the best of my knowledge, Mr Agius, but do
10 we have the original of this document? That should be able
11 to determine whether or not I've actually signed this
12 document. But --

13

14 Q. You can imagine, Mr Stott, that, given your evidence
15 this morning, those inquiries are under way. Do you say
16 you did not know about the 33,000 tonne shipment on the
17 Tiger Island in February of 1996?

18 A. No.

19

20 Q. You don't know how that was financed?

21 A. No.

22

23 Q. And you didn't have any discussions with DFAT about
24 it?

25 A. No.

26

27 Q. You didn't receive the permission to export?

28 A. I didn't, no.

29

30 Q. Would it not have been highly unusual for anybody at
31 AWB to write to Mr Bowker, the acting assistant secretary,
32 Middle East Africa branch of DFAT, in your name without
33 informing you?

34 A. Yes.

35

36 THE COMMISSIONER: Q. Especially after you'd left?

37 A. Yes.

38

39 MR AGIUS: Q. Can you think of any reason why that would
40 have been done? You understand, for the purposes of this
41 question, I'm accepting your evidence that you did not
42 knowingly sign this document when it contained the printed
43 material on it. Can you think of any reason why, as at
44 12 February 1996, anybody would be sending communications
45 from AWB to DFAT under your signature?

46 A. No.

47

1 Q. It appears on the face of this document that it could
2 not have been sent by accident, in that the document
3 actually bears your signature and it bears your name and
4 description.

5 A. Yes.

6

7 Q. It is sent to Mr Bowker. You would have known him
8 well enough in 1996 to refer to him as "Bob"?

9 A. Yes.

10

11 Q. Can we go back to the fax of 2 February 1996,
12 exhibit 270.

13

14 THE COMMISSIONER: Is there a spare copy of that to go on
15 the screen?

16

17 MR AGIUS: Q. You have one, don't you, Mr Stott?

18

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20 A. I have that. This is 2 February 1996, yes.

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1 A. My understanding when I left AWB was --

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3 Q. Sorry, I just can't hear you.

4 A. Sorry, Mr Agius. My understanding when I left AWB was
5 that the original proposal of deferred payments or oil
6 receipts were not acceptable to DFAT, and I understood that
7 payment via third parties was acceptable to DFAT and
8 subsequently accepted by the UN. That was my understanding
9 when I left the AWB.

10

11 Q. So are we clear about this, that when you left AWB
12 your state of knowledge was that DFAT would not approve of
13 any proposal which involved the deferred payment, either in
14 money or in oil, for wheat by Iraq whilst sanctions were
15 still in place?

16 A. At that time they would not approve it, yes.

17

18 Q. That would seem to be in accordance with what is set
19 out in exhibit 269, if we go to the letter of 25 January
20 1996.

21

22 THE COMMISSIONER: Is there a copy that can go on the
23 screen?

24

25 MR AGIUS: Q. It states:

26

27 In view of our discussions towards the end
28 of last year on the acceptability of
29 various methods of payment for humanitarian
30 goods destined for Iraq and my letters to
31 you on this subject, we have reviewed the
32 issue comprehensively in consultation with
33 our Mission in New York. I thought it
34 would be useful to set out for you the
35 results of this review, in particular as
36 they relate to future applications by your
37 organisation to export wheat to Iraq.

38

39 Our Mission to the UN in New York has
40 indicated that in view of the worsening
41 humanitarian situation in Iraq the UN
42 Sanctions Committee is prepared to accept
43 the export to Iraq of foodstuffs for
44 humanitarian purposes under credit
45 arrangements. Such credit arrangements
46 are, however, only acceptable if they are
47 made on the condition that the debt can be

1 realised after sanctions has been lifted
2 and does not involve the unfreezing of
3 frozen Iraqi assets.

4
5 Then further down the page:

6
7 The question of transactions involving
8 third parties is viewed by the Sanctions
9 Committee as much less clear cut. The
10 issue at stake is whether the activities of
11 the third party comply with the relevant
12 Security Council Resolutions and whether
13 the Government lodging the notification
14 was, by virtue of this, sponsoring the
15 activities of the third party. In this
16 regard, Sanctions Committee interlocutors
17 stress that it is the responsibility of the
18 state submitting the notification request
19 form to satisfy itself that the proposed
20 transaction would not involve the use of
21 frozen Iraqi assets or the realisation of a
22 debt before sanctions are lifted.

23
24 Would that have accorded with your state of knowledge of
25 the situation as at the time that you left AWB?

26 A. No.

27
28 Q. What part of that were you not aware of as at the time
29 you left AWB?

30 A. I haven't - I don't recall - I'm very confident that I
31 have not received this letter, and - until you handed it to
32 me today.

33
34 Q. I understand that, but I'm asking you to consider the
35 content of it, those two portions that I've read, and to
36 ask you whether, as at the date that you left AWB in 1996?

37 A. Well, I think the second paragraph that you've
38 highlighted on my copy --

39
40 Q. Well, I can't see that. Can you just read the
41 commencing words?

42 A.
43 ...is prepared to accept the export to Iraq
44 of foodstuffs for humanitarian purposes
45 under credit arrangements.

46
47 That is a very significant shift in the state of my

1 knowledge at that time.

2

3 Q. You link that with the next paragraph, next sentence,
4 don't you:

5

6 Such credit arrangements are, however, only
7 acceptable if they are made on the
8 condition that the debt can be realised
9 after sanctions has been lifted and does
10 not involve the unfreezing of frozen Iraqi
11 assets.

12

13 A. Mmm.

14

15 Q. So what DFAT was saying was if you have credit
16 arrangements they can only be on condition that the debt
17 can be realised after sanctions have been lifted.

18

19

20 Q. What I understood you to tell me a little earlier
21 today was that your understanding was that you couldn't
22 have a credit arrangement if the credit arrangement
23 required the payment of the debt whilst sanctions were in
24 place. This advice takes the matter a little further.

25

26

27 Q. It says you can have a credit arrangement, provided
28 they are made on condition that the debt can be realised
29 after sanctions have been lifted.

30

31

32 Q. Is it that portion, that you could have a credit
33 arrangement on condition that the debt can be realised
34 after sanctions have been lifted, that is new knowledge for
35 you?

36

37

38 Q. Otherwise your knowledge would have been that you
39 couldn't have a credit arrangement at all if the credit
40 arrangement required the repayment of the debt whilst
41 sanctions were still in place?

42

43

44 Q. What about the second passage that I read to you,
45 commencing "The question of transactions involving third
46 parties is viewed by the Sanctions Committee as much less
47 clear cut", and the rest of that paragraph? Did you have

1 that knowledge - I'm not suggesting that you read this
2 letter, but did you have that knowledge as at the date that
3 you left AWB?

4 A. No.

5

6 Q. It is apparent, however, that DFAT's view was that it
7 had a legitimate interest in the activities of the third
8 party and in ensuring that the activities of the third
9 party complied with the relevant Security Council
10 resolutions; is that not right?

11 A. Sorry, Mr Agius, would you mind repeating that
12 question? Sorry.

13

14 Q. It is apparent from the letter, however, that DFAT's
15 view was that it had a legitimate interest in the
16 activities of the third party and in ensuring that the
17 activities of the third party complied with the relevant
18 Security Council resolutions?

19 A. Yes.

20

21 Q. But do you say that's not something of which you were
22 aware when you left the AWB?

23 A. That's correct.

24

25 Q. Mr Stott, can you think of any reason why anybody at
26 AWB would have sent the two faxes, of 2 February and
27 12 February, in your name without reference to you?

28 A. They were probably trying to leverage off my
29 relationship with DFAT. I had a very open and strong
30 dialogue with DFAT that had been established over many
31 years, and I suspect they were probably just trying to use
32 my name in that context.

33

34 Q. They were taking a risk, though, weren't they, that
35 Mr Bowker might telephone you or attempt some direct
36 communication with you about the content of these two faxes
37 and either not be able to reach you or find that you knew
38 nothing about them?

39 A. Yes.

40

41 Q. Who took over your position at AWB when you left?

42 A. Mark Emons.

43

44 Q. Did you pass over to Mark Emons personally?

45 A. No.

46

47 Q. Did you brief anybody when you left --

1 A. No.

2

3 Q. -- on the state of various matters that were within
4 your knowledge?

5 A. No.

6

7 Q. I was asking you last week some questions about a
8 meeting that I suggest you had with two officers of DFAT on
9 22 May 1997. As at 22 May 1997, before that meeting, what
10 was your belief in relation to DFAT's attitude to approving
11 arrangements where there was the provision of credit for
12 the supply of wheat?

13 A. I talked about my state of mind when I left AWB, my
14 knowledge, so we've covered that. It's at that - around
15 that time when we had meetings with DFAT that I became
16 aware that BHP's arrangements that they had, well, options
17 that they may have had available to them were - one of them
18 included the repayment of the debt.

19

20 Q. What options did you learn of?

21 A. Well, one of them - we talked about that last week,
22 Mr Agius. One was if they had won oil field development
23 rights, I assume they would not have pursued the
24 obligation. If sanctions were lifted, they may have taken
25 oil in payment of those goods, or, indeed, they may have
26 sought to get repayment of that cargo.

27

28 Q. How did you learn that?

29 A. I think it was around the time of this meeting with
30 DFAT that I became aware of that.

31

32 Q. Yes, but how? Were you told by persons within BHP
33 that these options were available to them?

34 A. I'm not sure how I became aware of that. I'm just not
35 sure.

36

37 Q. It's not knowledge you had at the AWB; is that what
38 you say?

39 A. Yes. I did not have that knowledge at AWB, that's
40 right.

41

42 Q. Do you say that when you left AWB your state of
43 knowledge was simply that this was a gift by BHP to the
44 Iraqis?

45 A. Yes.

46

47 Q. And do you say that when you left AWB your state of

1 knowledge was that there was no arrangement between BHP and
2 the Iraqis for deferred payment for that wheat?
3 A. Yes, I did not know of any arrangements that existed
4 between BHP and the Iraqis.
5
6 Q. So far as you were concerned, it was a gift and there
7 was no issue of payment?
8 A. That's right.
9
10 Q. Then you left AWB and went to BHP?
11 A. Yes.
12
13 Q. How much time elapsed between your leaving AWB and
14 your commencement at BHP?
15 A. Two weeks, or thereabouts. I can't be precise.
16
17 Q. Do you say that from the time you commenced at BHP up
18 until your meeting on 22 May, during that period of time
19 you learnt that there were these options available to BHP?
20 A. I think it was only around the time that we had the
21 meeting with Mr Pierce that I became aware of it. I didn't
22 know anything up until around that point in time. So that
23 meeting was in May, wasn't it?
24
25 Q. 22 May. So did you learn about these options at the
26 meeting?
27 A. I don't know if I learnt about the options at the
28 meeting. I learnt about one of the options at that - or
29 just prior to that meeting, because I think Mark would have
30 rung to say that he was coming down and he wanted to
31 discuss this particular shipment, so it would have been
32 around the time that Mark made the appointment when I was
33 alerted to this matter.
34
35 Q. He told you, did he?
36 A. Yes.
37
38 Q. What did he tell you?
39 A. That he wanted - well, I understood the purpose of the
40 meeting was to discuss that particular shipment.
41
42 Q. Did he tell you that at that time BHP had options?
43 A. No, he didn't tell me. He wanted to discuss the
44 shipment. I became aware of - not options, but I think
45 there was complete uncertainty as to how BHP may receive
46 value for that cargo at that time. I don't think anyone
47 was clear on what would happen in the future, because we

1 were unclear about the sanctions environment. At that
2 point people did believe that sanctions - the lifting of
3 sanctions, the Iraqis certainly believed the lifting of
4 sanctions was imminent. So I don't think there was any -
5 there was no real clarity within BHP as to what the - how
6 BHP would derive value.

7
8 Q. But you were clear that it was a gift at the time you
9 left AWB?

10 A. Yes.

11
12 Q. Because permission to export had been obtained on that
13 basis. The whole matter had been put forward on the
14 basis --

15 A. Yes.

16
17 Q. -- that there would be payment by third parties and
18 that it would be a gift?

19 A. Yes.

20
21 Q. So you must have been quite surprised when you learnt
22 during the course of your employment at BHP that there were
23 other options in relation to obtaining some benefit as a
24 result of that gift?

25 A. I was.

26
27 Q. Can you remember who told you?

28 A. No, I can't remember who told me.

29
30 Q. Was it Mr Davidson Kelly?

31 A. It could have been.

32
33 Q. You attended this meeting on 22 May with Mr Lyons?

34 A. Yes.

35
36 Q. Prior to attending the meeting you must have had
37 meetings with Mr Lyons and with others at BHP in order to
38 work out a position that BHP would be taking at the
39 meeting?

40 A. I actually think, Mr Agius, it was quite a surprise to
41 Mr Lyons as well as to what we found out at that meeting,
42 and I remember saying - or I recall saying to Jim, "Are you
43 aware of what arrangements are in place", and I don't think
44 he was aware either of what arrangements were in place.

45
46 Q. When you say it was a surprise what you found out at
47 the meeting, what did you find out at the meeting?

1 A. That one of the options that was being pursued was the
2 potential repayment of the cargo.

3

4 Q. Do you say you never found out anything about that
5 until you got to the meeting?

6 A. I can't be certain about that, but certainly if - I
7 may have found out about it when Mark rang to arrange the
8 meeting, but I can't be certain as to when I found out
9 about that. It was around that time.

10

11 Q. You've said that it wasn't Mr Pierce who told you when
12 he rang to make the arrangements. You've said that it
13 wasn't he who told you about the options that BHP might
14 have had and which they might want to explore in order to
15 gain value for that donation of wheat. You didn't know
16 about it when you were at AWB. Is it not likely that your
17 source of information about those options was a source
18 within BHP?

19

A. Yes.

20

21 Q. Is it not, therefore, likely that you had found out
22 about the existence of those options before you attended
23 upon this meeting?

24

A. No.

25

26 Q. There were two DFAT persons at the meeting, three AWB
27 persons at the meeting, yourself and Mr Lyons. You say you
28 and Mr Lyons didn't know; is that what you say?

29

A. There were three AWB people at the meeting?

30

31

Q. Yes.

32

A. Who were the AWB people at the meeting?

33

34

Q. Ms Martin and Messrs Goodacre and Harvey.

35

A. No, I don't think, Mr Agius, that Jim Lyons and I were
36 at all clear on what the options were. I don't think BHP
37 was actually clear about how they would get a benefit from
38 the provision of that cargo at that time. This was one
39 thing - option that was being raised with me that I became
40 aware of and it was the first time that I had acquired any
41 knowledge on the BHP side of the transaction since joining
42 BHP.

43

44

45

46

47

Q. That's what I'm trying to understand from you,
Mr Stott. You were at BHP, your state of knowledge up
until a certain point in time is that this was a gift. At
some point in time you obtain additional information. When

1 was that point in time?

2 A. I think it was around this meeting, but I can't be
3 certain if it was at the meeting or just prior to the
4 meeting. I just --

5
6 Q. Well, let me help you with that. It couldn't have
7 been at the meeting, could it, because the only two BHP
8 people who were at the meeting were yourself and Mr Lyons?

9 A. It could have been at the meeting, because we were
10 quite - we were surprised. It was --

11
12 Q. Who at the meeting had more knowledge about BHP's
13 options concerning getting value for this gift of wheat
14 than you and Mr Lyons?

15 A. No-one else at the meeting, but I don't think that Jim
16 and I knew when we were at that meeting of the options. We
17 were not aware of it.

18
19 Q. What, do you say that when you went in to that
20 meeting, you went in believing that the wheat had been a
21 gift and that there was no possibility of getting any
22 payment for that wheat?

23 A. Yes.

24
25 Q. That was your firm belief when you went in to that
26 meeting?

27 A. Mr Agius, I just - my difficulty with - I'd like to
28 answer yes to that question, but my difficulty is that, in
29 preparing for that meeting, if Mark Pierce had rung and
30 alerted me to the fact that he wanted to have a meeting
31 about this particular subject, I probably became - I may
32 have become aware of it before we went to the meeting
33 because I would have asked Jim about it, and I think we
34 went to the meeting seeking knowledge. We really didn't
35 know.

36
37 Q. From whom would you have been seeking knowledge?

38 A. From DFAT.

39
40 Q. And what knowledge were you seeking from DFAT? What
41 did you want to know from DFAT?

42 A. Well, I wanted to listen and understand what they
43 wanted to discuss about this particular cargo.

44
45 Q. Are you suggesting by that that DFAT had indicated to
46 you that DFAT wanted to discuss with you what BHP's options
47 were in relation to that cargo?

1 A. No, I'm suggesting that DFAT were wanting to discuss
2 the deferred payment - any deferred payment mechanism.
3 They didn't want to discuss any of the other options.
4

5 Q. Deferred payment mechanism for future shipments of
6 wheat, or deferred payment mechanisms for shipments of
7 wheat that had already taken place and which had been said
8 to be a gift?

9 A. The latter.

10
11 Q. Why would DFAT want to discuss the situation in
12 relation to shipments of wheat that had already taken place
13 and had been said to be a gift?

14 A. DFAT did not know who the third party paying for the
15 cargo was at the time of the shipment. I think they only
16 became aware of that after the shipment had gone, and so
17 they're obviously then following up any concerns that they
18 may have with the party that financed that cargo, being
19 BHP.
20

21 Q. Well, did you say when you arrived there, "Look, this
22 was a gift", that so far as BHP is concerned this is no
23 more than a gift and there's nothing to talk about?

24 A. No.
25

26 Q. Why not?

27 A. Because this is the first time I had gained any
28 insight while at BHP as to what their arrangements may have
29 been, and so now I'm a BHP employee I'm looking after BHP's
30 interests and I would not have said that at that meeting,
31 because I was not party to the negotiations at the time the
32 transaction was in place. This is the first time I've had
33 any insight into the BHP side of the transaction.
34

35 Q. Would you not have made it your business to find out
36 before that meeting what was the attitude of BHP to the
37 shipment of wheat that had already taken place, and,
38 indeed, what its attitude might be to future shipments of
39 wheat?

40 A. I talked to Mr Lyons, I think, before the meeting, and
41 I don't think Mr Lyons was able to provide me with any
42 clarity. He was uncertain as well, so we agreed to go to
43 the meeting and effectively learn.
44

45 Q. I just am having trouble understanding what the source
46 of your uncertainty might have been. You left AWB with a
47 certain state of knowledge, and if we understand your

1 evidence correctly, it was that this was a gift. So far as
2 you were concerned, what was the source of any uncertainty
3 that you had?
4 A. When DFAT wanted to have a meeting on this particular
5 subject.
6
7 Q. So right up until then you had no uncertainty at all?
8 A. No.
9
10 Q. What did Mr Pierce tell you that gave rise to this
11 uncertainty?
12 A. That I assume he wanted a meeting --
13
14 Q. No, what did he say to you that gave rise to the
15 uncertainty?
16 A. He talked about the payment mechanism.
17
18 Q. For what?
19 A. For that cargo.
20
21 Q. For the 20,000 tonne cargo?
22 A. Yes.
23
24 Q. Mr Pierce spoke to you about a payment mechanism for
25 that cargo?
26 A. Yes.
27
28 Q. What did he say to you?
29 A. Well, this was in the meeting, Mr Agius.
30
31 Q. No, no, let's not change the subject. I'm asking you
32 about what was said to you when Mr Pierce called you to
33 arrange the meeting, before the meeting?
34 A. I don't recall what he said, Mr Agius. I just assume
35 that he would have told me that the meeting was in relation
36 to that particular shipment. I don't recall him alerting
37 me to anything other than that.
38
39 Q. But if he called you and said words to the effect "I'd
40 like to have a meeting about that shipment of the 20,000
41 tonnes of wheat", and then a meeting was arranged and no
42 more was said, why would that give rise to any uncertainty
43 in your mind as to the basis upon which that wheat was
44 provided?
45 A. Why would Mark want to have a meeting on that
46 particular subject. Obviously he was concerned enough to
47 want to have a meeting on that subject, so obviously at

1 that point I would want to know why.
2
3 Q. So you went to Mr Lyons?
4 A. Yes.
5
6 Q. Did you go to Mr Davidson Kelly or anybody who had
7 been on the other side of that deal from BHP at a time when
8 you were at the AWB?
9 A. Mr Lyons.
10
11 Q. Only Mr Lyons?
12 A. Well, I'm not - Mr Davidson Kelly had spent - he had
13 dual residency. He had some spots - sorry, not dual
14 residency, but he lived in the UK for some of the period
15 and then would come down to Australia for some weeks and
16 then go back to the UK. So he worked from two locations in
17 the globe, and he may not have been there at that time.
18
19 Q. Well, was Mr Lyons the only person that you went to?
20 A. Yes.
21
22 Q. What did he say to you? Did he confirm your view,
23 that this had been a gift?
24 A. No, I don't think he knew. He was uncertain too.
25
26 Q. You were not uncertain, though, were you, until you
27 received the phone call from Mr Pierce saying, in effect,
28 "I want to have a meeting about that 20,000 tonnes"?
29 A. That's right.
30
31 Q. That's all Mr Pierce said to you?
32 A. As far as I can recall, that's the extent of the
33 conversation.
34
35 Q. That gave rise in your mind to uncertainty as to some
36 issue concerning whether BHP would be paid for that 20,000
37 tonnes?
38 A. Yes.
39
40 Q. You went to Mr Lyons?
41 A. Yes.
42
43 Q. And he didn't know?
44 A. No.
45
46 Q. Was he aware that it had been a gift? Did he say that
47 to you?

1 A. No.
2
3 Q. Did he know anything about the deal?
4 A. Yes.
5
6 Q. What did he know? What did he say to you that he
7 knew?
8 A. That a cargo had been provided, BHP had paid for that
9 cargo, but I don't think he had any certainty or clarity as
10 to what options there might be.
11
12 Q. Let's leave aside these words of certainty and
13 clarity. Just what did he say to you? So far we know that
14 he said to you that BHP had paid for the cargo. What else
15 did he say to you?
16 A. Nothing that I recall.
17
18 Q. Did he say that it had been a gift?
19 A. No.
20
21 Q. Did you tell him that you believed it had been a gift?
22 A. I think I explained to him what my state of knowledge
23 at the AWB was when I was at the AWB about the cargo, and
24 he - I think we agreed we'd go to the meeting and listen.
25
26 Q. Why not go to somebody else within BHP, who was on the
27 BHP side of the agreement when the deal had been put
28 together back in 1995, early 1996, and find out what was
29 BHP's position in relation to Iraq concerning the provision
30 of this wheat?
31 A. Well, I may have tried to seek clarity from Norman,
32 but I'm not sure that Norman was there, or, if he was
33 there, whether he was available. It was very difficult to
34 get meetings with Norman.
35
36 Q. So at that time do you say that you went to this
37 meeting in the belief, so far as you knew, that this was a
38 gift?
39 A. Yes.
40
41 Q. So far as Mr Lyons had spoken to you about the matter,
42 he went to the meeting - I'm speaking of your
43 understanding - on the basis that he didn't know?
44 A. Yes.
45
46 Q. Your mindset was simply to listen to what DFAT had to
47 say at the meeting about this gift of 20,000 tonnes of

1 wheat?
2 A. Yes.
3
4 Q. Did you speak with anybody from AWB before that
5 meeting?
6 A. No, I don't think so.
7
8 Q. I'm sorry?
9 A. No, I don't think I did.
10
11 Q. Mr Stott, I suggest to you that that meeting was
12 called to discuss future plans to sell wheat to Iraq
13 against a five-year letter of credit.
14 A. No.
15
16 Q. I suggest that it was called to discuss the problem
17 that in fact is reflected in the documents that you've seen
18 earlier today, in particular the first fax, when there was
19 a proposal put to DFAT for advice concerning whether or not
20 a deferred payment could be made.
21 A. No.
22
23 Q. I suggest to you that at the meeting the AWB said that
24 they were not so keen on the proposal for the future to
25 sell wheat to Iraq against a five-year letter of credit and
26 that they were prepared to drop the idea. What do you say
27 to that?
28 A. No.
29
30 Q. I suggest that they said that their plans for shipment
31 to Iraq that year - this was 1996 - could all be done on a
32 cash-on-delivery basis.
33 A. No, I don't recall that being discussed at the
34 meeting.
35
36 Q. I suggest that, on behalf of BHP at this meeting, it
37 was said that BHP was prepared to walk away from the deal
38 concerning the 20,000 tonnes, provided BHP could say to the
39 Iraqis that they had been prepared to entertain the
40 possibility of deferred payment for that wheat. What do
41 you say to that?
42 A. No.
43
44 Q. I suggest to you that you were told emphatically at
45 the meeting that there could be no respective approvals for
46 payment for shipments that had already been sent.
47 A. No.

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Q. I suggest that you suggested that you could obtain from the Iraqis some form of side letter to cover the 20,000 tonnes of wheat that had been already shipped.

A. No.

Q. And that you explained that in terms that the Iraqis would promise some form of payment in kind, either in oil or in goodwill, at some unspecified date.

A. Sorry, Mr Agius, would you mind repeating that?

Q. I suggest to you that you explained the plan of sending a form of side letter in terms that the Iraqis would promise some form of payment in kind, either in oil or in goodwill, at some unspecified date.

A. No.

Q. I suggest that you asked if DFAT would be prepared formally to be made aware of that proposal on the basis that BHP might at some later stage need some future ambassador in Baghdad to argue that it should be redeemed; that is, that the cost of the wheat should be redeemed.

A. No.

Q. What did you say during the course of that meeting? What do you say you said?

A. I don't recall saying much at all during that meeting, because we approached the meeting on the basis of getting information from DFAT. DFAT asked for the meeting. DFAT - Mark led the meeting, and we were - Jim and I were there trying to find out information.

Q. Well, you say you don't recall saying much. What did you say?

A. I don't know what I said, Mr Agius.

Q. Did you say anything about this 20,000 tonnes?

A. It wouldn't have been my place to say or make any statements around this 20,000 tonnes because I did not know at that time what BHP's arrangements were. So I would have approached the meeting on the basis of understanding - increasing my knowledge and understanding on this subject.

Q. What were you told, then? If you went there to hear what DFAT had to say, what were you told?

A. I don't recall what I was told, but I don't recall being told what you've just read out to me.

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Q. You went to the meeting wanting to hear what DFAT had to say about the 20,000 tonne shipment?

A. Yes.

Q. And you don't recall what you said and you don't recall what DFAT said?

A. I don't recall what I said. I recall DFAT talking about a deferred payment mechanism and that was not going to be acceptable. I recall that.

Q. What did DFAT say?

A. I don't recall exactly what DFAT said at the meeting, Mr Agius.

Q. Well, did you find out what the source of this suggested deferred payment mechanism was, where it had come from?

A. I asked Jim and Jim - after the meeting - I think after the meeting, and Jim was not - could not provide - he was uncertain too.

Q. What about during the meeting? This is one of the reasons you went to the meeting, to find out about what DFAT had to say about this 20,000 tonne shipment of wheat. Did you find out during the course of the meeting what the source of any suggestion that there be a deferred payment plan concerning that 20,000 tonnes was?

A. No.

Q. So did you leave the meeting in the same state of lack of clarity that you had when you went in to the meeting?

A. Yes.

Q. You left the meeting believing still that the 20,000 tonnes was a gift?

A. No.

Q. What was your state of knowledge when you left the meeting?

A. That possibly BHP had entered into - not entered into, had a different view as to how that cargo was to be addressed in Iraq.

Q. What does that mean, "had a different view as to how that cargo was to be addressed in Iraq"? It was either a gift or it wasn't?

1 A. Well, BHP didn't consider it to be a gift.

2

3 Q. So you left that meeting with a view that BHP did not
4 consider the 20,000 tonnes to be a gift?

5 A. I left that meeting realising that there was a
6 difference between my state of mind at AWB and now that BHP
7 may have had a different view as to that cargo and, yes,
8 that was a surprise to me.

9

10 Q. What was your source of knowledge or belief that BHP
11 may have had a different view in relation to that cargo?

12 A. Mark Pierce's position in the meeting in respect to
13 the deferred payment.

14

15 Q. But Mark Pierce wasn't from BHP?

16 A. No.

17

18 Q. So how did anything that Mark Pierce said give you a
19 view that BHP had a different view about that cargo?

20 A. Because Mark was obviously concerned enough about this
21 particular cargo to come and have a meeting with us to
22 discuss the cargo, and at that meeting I became aware or
23 informed that possibly there is a - BHP's view of the cargo
24 was different to mine when I was at AWB.

25

26 Q. Who told you that?

27 A. No-one told me. It was the view that I formed during
28 the course of the meeting.

29

30 Q. But upon what did you form that view?

31 A. Because of Mark's view around his concern if a
32 repayment was expected.

33

34 Q. What did he say about that?

35 A. Well, he's obviously subsequently documented it in --

36

37 Q. No, I'm not talking about subsequently.

38 A. I don't recall what he actually said, Mr Agius, but
39 that was the general concern of that meeting. I don't
40 recall what he said.

41

42 THE COMMISSIONER: Q. Mr Stott, you and Mr Lyons went
43 there as the representatives of BHP. You say it was your
44 belief, you believe Mr Lyons believed, when you went into
45 that meeting that the shipment was a gift. You had been
46 called to this meeting with DFAT to discuss the cargo.
47 You'd made no other inquiries which disabused you of your

1 view that it was a gift. Somebody from DFAT, you say,
2 started talking about deferred repayment. Did you not say,
3 "What on earth are you talking about, this cargo was a
4 gift?"

5 A. No, I didn't, Commissioner, because this is - I am now
6 being informed in BHP of the cargo which I had no knowledge
7 of the BHP side of the transaction, so I remained very
8 silent throughout that meeting because I was acquiring
9 information and I would not make a statement like that, now
10 being a BHP representative, that could affect BHP's
11 position when I'm not aware of what BHP's position was.
12

13 Q. But didn't you say to them, "Well, then, why are we
14 having this discussion? On what basis have BHP said to you
15 that this was a deferred payment transaction? Who told you
16 from BHP that this was a deferred payment transaction?
17 What are the terms of the deferment? With whom was that
18 arrangement made" - any of those things?

19 A. I didn't ask that in the meeting, Commissioner,
20 because obviously in the meeting I became aware of
21 information that BHP may have other - proposed other
22 arrangements that was contrary to my state of knowledge at
23 the AWB. I didn't ask at the meeting because I'm now a BHP
24 employee. At the end of the meeting I did say to Jim,
25 "Jim, do you understand anything about this particular
26 transaction, because it appears to me this is inconsistent
27 with where it was when the shipment went at AWB", and Jim
28 was unable to provide me with any further clarity, and I --
29

30 Q. So did you go back to BHP and say to somebody, "Please
31 tell me what the reality is from BHP's point of view, their
32 perspective on this deal?"

33 A. I think on a letter that you showed me yesterday, that
34 was a draft letter to Zuhair Daoud, Jim Lyons and I sat
35 down and prepared that letter and provided that letter to
36 Norman Davidson Kelly, and we were using that as the basis
37 to forward that - for a discussion with Norman on the
38 matter.
39

40 MR AGIUS: Q. You came back to BHP on 22 May. Did you
41 then go and speak to people at BHP?

42 A. I think that draft letter which we just talked about,
43 the draft email message to Zuhair that Jim and I prepared,
44 was the basis for a discussion to be had with my manager at
45 that time on this subject.
46

47 Q. So you went back and then prepared that letter - is

1 that the next thing that you did?
2 A. I believe that's right, but I'd like to make sure that
3 the sequence of that letter is correct.
4
5 Q. That's why I'm asking you what you did, Mr Stott. I
6 didn't introduce that letter, you did. What did you do
7 after that meeting?
8 A. I believe that I prepared that letter - sorry, we then
9 received after that meeting the letter addressed to Tom
10 Harley that you showed me on Thursday, and I think the
11 sequence would be - I haven't got these documents in front
12 of me, Mr Agius. I'm going blind here. Can I --
13
14 Q. I don't want you to fly blind. I simply want you to
15 tell us what was the first thing you did when you got back
16 to BHP after the meeting with DFAT. I had asked you a
17 question about meetings.
18 A. The meeting was at BHP.
19
20 Q. Well, thank you for that. So if you remember that,
21 Mr Stott, so clearly, perhaps you might remember what it
22 was that you did after that meeting.
23 A. I discussed my concerns with Jim Lyons.
24
25 Q. Yes, what did you say and what did he say?
26 A. I said to Jim that this is different to my state of
27 knowledge at the AWB, therefore there may be a problem here
28 for BHP, "Are you aware, Jim, of what the arrangements
29 are?", and I don't think Jim was aware either. I think he
30 was completely uncertain.
31
32 Q. Isn't that the same conversation that you had with him
33 before you went to this meeting?
34 A. It was probably a very similar conversation that we
35 had before we went to the meeting, yes.
36
37 Q. So you had a similar conversation after the meeting,
38 which, might I suggest to you, was no more satisfactory in
39 terms of answering any issues that had been raised in your
40 mind.
41 A. That's right.
42
43 Q. So what did you do after that?
44 A. Well, I spoke - I raised my concerns with Jim, and I
45 think Jim undertook to follow it up with Mr Davidson Kelly.
46
47 Q. What did you do?

1 A. Nothing else after that.

2

3 Q. Well, the next thing that happened then, was the
4 receipt on 27 May of the letter from DFAT to Mr Harley.

5 A. That would have been the next thing that happened,
6 yes.

7

8 Q. Did you speak to Mr Harley about what had happened in
9 your meeting with DFAT, prior to his receipt of that
10 letter?

11 A. I may have. I don't recall.

12

13 Q. We'll bring up that letter, please. It's exhibit 266,
14 DFT.0008.0151. The letter recites this:

15

16 When Ms Grant-Thomson and I discussed
17 issues affecting Iraq with your colleagues
18 (Mr Stott and Mr Lyons) on 22 May, we
19 promised you a substantive reply on
20 questions related to the shipment of wheat
21 against a five-year letter of credit.

22

23 Had you been promised in that meeting a reply on questions
24 related to the shipment of wheat against a five-year letter
25 of credit?

26 A. No.

27

28 THE COMMISSIONER: Q. Did you raise any questions at
29 that meeting?

30 A. I may have, Commissioner, but I'm just not certain
31 that I raised questions --

32

33 Q. It seems unlikely that DFAT would raise their own
34 questions and send you a reply to this.

35 A. Sorry, Commissioner, I just don't recall asking
36 questions of them.

37

38 MR AGIUS: Q. You're not suggesting that DFAT posed
39 these questions themselves in this letter and pretended
40 that you'd raised them, are you?

41 A. I don't recall raising these questions, Mr Agius, to
42 DFAT. I think these questions or concerns were raised by
43 DFAT at that meeting. I didn't raise them.

44

45 Q. But not by you?

46 A. Not by me, no.

47

1 Q. So neither yourself nor Mr Lyons raised any questions
2 relating to the shipment of wheat against a five-year
3 letter of credit?

4 A. I don't recall us doing that, because we weren't aware
5 of any concerns at that time. Certainly I wasn't, and I
6 can't speak for Mr Lyons' state of knowledge, but we
7 certainly approached the meeting on the basis that we were
8 looking for information. We were in a discovery process.
9 We couldn't make any --

10
11 Q. What about the future? Did you raise in relation to a
12 possible future supply of wheat, that that supply of wheat
13 be against a five-year letter of credit? Did you raise
14 that during the meeting on 22 May?

15 A. I don't think BHP had any intention of making
16 subsequent shipments of grain to Iraq or financing it,
17 so --

18
19 Q. What's your answer to my question?

20 A. No.

21
22 Q. Then DFAT go on in this letter to say this:

23
24 First, having carefully and thoroughly
25 considered all the implications, Ministers
26 have decided not to endorse the proposal
27 that some wheat be shipped against payment
28 by a five-year letter of credit, and they
29 therefore decided that no submission
30 containing any such proposal should be put
31 to the UN sanctions committee.

32
33 So do you say that DFAT are saying this in the letter and
34 that they have not any proposal or request from BHP?

35 A. Not that I'm aware of.

36
37 Q. Let's go on to the second issue they raise:

38
39 Second, your colleagues --

40
41 you will recall that in the first line of the letter "your
42 colleagues" is bracketed against Mr Stott and Mr Lyons --

43
44 raised questions about the export of 20,833
45 metric tonnes of wheat to Iraq which took
46 place in January 1996.

47

1 Then they go on to explain the background. The next
2 sentence deals with the grant of the permission. The next
3 sentence deals with the notification, which indicated that
4 the method of payment would be "cash payment to be received
5 through third parties". It's the last sentence that I want
6 to ask you about, Mr Stott:

7
8 We now understand that BHP was the third
9 party, which paid for the export of this
10 wheat to Iraq.

11
12 Did you confirm that in the meeting that you had with the
13 DFAT officers?

14 A. We may have.

15
16 Q. Then the next paragraph:

17
18 I understand from your colleagues --

19
20 we read there Mr Stott and Mr Lyons --

21
22 that there is some thought being given to
23 ways in which BHP's gift of wheat to Iraq
24 might be re-formulated as a credit
25 arrangement (whether on a five year term or
26 different terms), or in a way which
27 otherwise (possibly by payment in kind or
28 in political goodwill) give BHP "value" for
29 the gift.

30
31 Now, did you or Mr Lyons say words to that effect, that
32 some thought was being given to ways in which BHP's gift
33 might be reformulated as a credit arrangement?

34 A. No, I don't recall that.

35
36 Q. No, it wasn't said?

37 A. No, I say it was not said by me or Mr Lyons, but
38 colleagues - they might have had --

39
40 Q. There was nobody else at the meeting from BHP, was
41 there?

42 A. No.

43
44 Q. When the author of this letter says "I understand from
45 your colleagues there is some thought being given to ways
46 in which BHP's gift of wheat to Iraq might be
47 reformulated", he's clearly intending to convey that that

1 thought had been telegraphed to him; isn't that right?

2 A. Yes.

3

4 Q. And you say it was not you and Mr Lyons, in your
5 presence, who telegraphed that thought?

6 A. I can be certain it wasn't me, Mr Agius. I'm not
7 certain about Mr Lyons.

8

9 Q. Mr Lyons in your presence?

10 A. Well, yes.

11

12 Q. He was in the meeting with you?

13 A. Yes. I'm not certain if we stayed in the meeting the
14 entire time, if I stepped out at various - at a various
15 point at a time in the meeting. I don't know - I may have
16 been there the entire time, I may have stepped out. I just
17 don't recall - I certainly didn't say it.

18

19 Q. Mr Stott, it would be entirely inconsistent with your
20 evidence to date if it were the case that Mr Lyons had a
21 view that there was some thought being given to ways in
22 which BHP's gift of wheat to Iraq might be reformulated,
23 would it not? You had discussed this with Mr Lyons before
24 the meeting and immediately after the meeting, and you've
25 not given any evidence of Mr Lyons saying anything about
26 that.

27 A. No. Well, I can't give evidence on what Mr Lyons said
28 because I don't recall what Mr Lyons would have said in
29 that meeting.

30

31 Q. But surely if he had said, "Look, BHP is giving some
32 thought to reformulating this as a credit arrangement",
33 that would have sounded quite loudly in your ears, would it
34 not?

35 A. Mr Agius, I think it would have, but there may have
36 been other discussions with Mark Pierce around this time
37 with other people in BHP. The only discussion may not have
38 been at this meeting. There were many people involved with
39 DFAT, so maybe he's using "colleagues" in a more broader
40 sense than being specific around Stott and Lyons. I just
41 can't - that's why, I'm sorry, I can't be certain.

42

43 Q. That is why I'm asking you whether you said that in
44 the course of the meeting or whether you heard Mr Lyons say
45 it.

46 A. I didn't say it, and I don't recall if Mr Lyons said
47 it.

1
2 Q. You don't recall if he said it or, to the best of your
3 recollection, he didn't say it?
4 A. I'd have to go on evidence as I don't recall.
5
6 Q. So if it was said, you don't remember it?
7 A. Correct.
8
9 Q. Then at the bottom of the letter:
10
11 The department takes the view that, if the
12 gift arrangement were re-formulated into a
13 credit arrangement, the requirement of
14 notification and disclosure to the UNSC
15 sanctions committee would not have been
16 met. That would not be acceptable
17 procedure. As far as the department is
18 concerned, the sale in January is a closed
19 matter and must remain closed, with the
20 shipment having been sent and received in
21 the terms notified to the UNSC.
22
23 Now, you agree that you saw this letter of 27 May 1996?
24 A. Yes.
25
26 Q. May we take it that, on or after about 27 May 1996,
27 you would have been aware that DFAT's position was that, so
28 far as the January shipment was concerned, it was a gift
29 and that that matter must remain closed?
30 A. Yes.
31
32 Q. That it could not be reformulated as a credit
33 arrangement of any kind?
34 A. That was what this letter told me on 26 May, yes.
35
36 Q. So as at 27 May --
37 A. 27 May.
38
39 Q. -- you knew that it couldn't be reformulated as a debt
40 or as any kind of credit arrangement, be it repayment in
41 goodwill or repayment in oil, it just simply had to be left
42 alone as a gift?
43 A. On 27 May that's what this letter advised BHP, yes.
44
45 Q. And that was your state of mind?
46 A. On seeing this letter, yes.
47

1 Q. Prior to 22 May, had you not been bluntly putting your
2 position to DFAT that it should consider deferred payment
3 for humanitarian shipments of wheat?

4 A. I'm sorry, Mr Agius, I don't understand the question.
5 Would you mind repeating it?

6
7 Q. I'll read it again.
8 A. Thank you.

9
10 Q. Prior to 22 May, had you not been bluntly putting your
11 position to DFAT, your position being that it should
12 consider the deferred payment for humanitarian shipments of
13 wheat?

14 A. No.

15
16 Q. Did you not, on 29 April 1996, tell Mr Pierce that
17 DFAT were missing the boat compared with Korea, Japan,
18 France and Canada, and that DFAT's interpretation of
19 sanctions was too rigid and that the accumulated goodwill
20 in Iraq was being wasted?

21 A. I don't recall that conversation with Mr Pierce.

22
23 Q. Did you say to Mr Pierce that, in substance, the
24 refusal to accept deferred payments for wheat was a
25 fabricated impediment to trade, where no real impediment
26 existed?

27 A. Well, certainly back in the AWB I was concerned that
28 DFAT's view of the sanctions and the fact that they
29 wouldn't put forward the deferred payment mechanism was
30 inhibiting - potentially inhibiting our trade, because the
31 Iraqis had said that they had support from the Security
32 Council members - namely, Russia and France - that if
33 DFAT - the Australian Government was prepared to or DFAT
34 was prepared to put those applications forward, given the
35 humanitarian crisis that was looming, they would have been
36 accepted, and DFAT were not prepared to put those forward.

37
38 Q. Didn't you say to Mr Pierce that if the letter of
39 credit provision of the proposal caused problems, it could
40 be deleted, but the five-year term - that is, the five-year
41 delayed payment term - had to stick?

42 A. No, I don't recall saying that to Mr Pierce.

43
44 Q. You see, what I'm suggesting to you, Mr Stott, is that
45 in late April you were expressing your opinion to DFAT that
46 the provision of credit for five years was not contrary to
47 the sanctions and that DFAT was taking too rigid a view,

1 which was harming Australia's capacity to trade with Iraq.
2 What do you say to that?

3 A. I may have had those conversations, because I think
4 that the Iraq - yes, I may have had those conversations.

5
6 Q. I'm suggesting to you that the meeting on 22 May was
7 arranged against the background of just those conversations
8 that you'd had with DFAT.

9 A. They may have been.

10

11 Q. And that it was arranged to deal with what you were
12 saying was an appropriate reading of the sanctions; that
13 is, that the sanctions should be read as though they
14 permitted an extension of credit of up to five years for
15 the shipments of wheat, and that that was the purpose of
16 the meeting, to discuss that issue?

17 A. Certainly at the meeting the issue of repayment was
18 discussed, but --

19

20 Q. What I'm suggesting to you is that, far from this
21 being a meeting that you were contacted about by Mr Pierce
22 because he wanted to discuss something with you, this
23 meeting was arranged and set up to discuss what you had
24 been raising with DFAT.

25 A. I had a long-standing position with DFAT that their
26 interpretation of the sanctions in respect to the deferred
27 payment mechanism that was proposed back in September was
28 not consistent with the current world view around
29 sanctions.

30

31 Q. And you knew of a proposal which involved a five-year
32 deferred payment?

33 A. That was back in September 2005, yes.

34

35 Q. No, no, you knew about that when you spoke to
36 Mr Pierce in late April 1996?

37 A. I think that's referring back to those discussions
38 that we were having with - ongoing discussions we were
39 having with Mr Pierce back in 1995 about deferred payment
40 mechanisms. I don't believe that was anything in relation
41 to the new - increasing my understanding of what was on the
42 BHP side.

43

44 Q. So what I'm suggesting to you is that your evidence
45 earlier today about the background to this meeting of
46 22 May was not accurate, that the meeting was not to be
47 viewed against the background that Mr Pierce had rung

1 wanting to discuss something about the 20,000 tonne
2 shipment, but that you had been raising concerns about the
3 way in which DFAT had been interpreting the sanctions, and
4 the meeting was called to deal with concerns that you had
5 been raising?

6 A. I don't agree.

7
8 Q. I suggest to you that during the course of that
9 meeting you raised the 20,000 tonne shipment and spoke of
10 it in terms that I put to you earlier; that is, that BHP
11 was considering reformulating that provision of wheat. I
12 suggest that you said those words, or words to that effect,
13 during the course of the meeting.

14 A. No.

15
16 MR AGIUS: I see the time, Mr Commissioner. Could we have
17 a short break?

18
19 THE COMMISSIONER: Yes, we'll have a short adjournment.

20
21 SHORT ADJOURNMENT

22
23 MR AGIUS: Mr Commissioner, I tender a minute from the
24 Department of Foreign Affairs and Trade by Mr Pierce of
25 23 May 1996.

26
27 EXHIBIT #272 MINUTE FROM DEPARTMENT OF FOREIGN AFFAIRS AND
28 TRADE BY MR PIERCE, DATED 23/5/1996

29
30 MR AGIUS: Q. The letter to Mr Harley from DFAT was
31 dated 27 May 1996. Did you read it on or about that day?

32 A. Yes.

33
34 Q. What discussions with anybody, if any, did you have
35 after the receipt of that letter from DFAT on the topics
36 that are raised in the letter?

37 A. I think that I had a discussion with Mr Davidson Kelly
38 about the contents of the letter.

39
40 Q. What was the substance of that discussion?

41 A. If he'd seen the letter, which I think he confirmed he
42 had seen the letter, and that he said they're working on
43 it.

44
45 Q. Working on what?

46 A. Well, he's aware of the letter and that he would take
47 it up with DFAT.

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Q. Did you have any discussion with him on the basis that, so far as you were aware, this shipment of 20,000 tonnes had been a gift?

A. I think I may have indicated to him that this was inconsistent with my knowledge at the AWB, when I was at the AWB.

Q. And what did he say to you about that?

A. I don't recall.

Q. Wasn't that the most crucial matter?

A. Mr Agius, he gave me comfort that he was aware of the letter, he'd take up the letter, he'd sort it out, and that was the last time this was ever discussed.

Q. The last time until when?

A. Oh, I discussed with Mr Lyons, and I think I prepared with Mr Lyons in light of this letter, that draft that I prepared for Zuhair, and I think I left that with - cleared by Jim, my handwriting on it, on Mr Davidson Kelly's desk, and with the suggestion that that's what we should be sending to the Iraqis.

Q. Why did you prepare this letter, the draft letter, which I believe is exhibit 208? Could we bring that up, please, AWB. 0129. 0152.

A. Yes. Is there another page? That was a letter that, following the Tom Harley letter, I think I prepared as a draft to send to Zuhair in order to clarify the understanding of the shipment at that time.

Q. Where did you get the information from that you put into this letter?

A. I think I would have got it from the letter addressed to Mr Harley.

Q. What other source did you have for information to be included in this letter?

A. Jim Lyons.

Q. Let's work through the letter:

For several months we have been discussing how we should proceed in terms of establishing a suitable payment mechanism. . .

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Where did you get that information from?

A. I don't recall.

THE COMMISSIONER: Q. Is it true?

A. When is this letter dated?

Q. 21 June.

A. May, June, several months - I might have been - several months, May/June we've been discussing it.

MR AGIUS: Q. What, you had had discussions, had you, between May and 21 June about how BHP and the IGB should proceed in terms of establishing a suitable payment mechanism?

A. No, not - these were not discussions with the IGB. I had no discussions on the subject with the IGB. This is discussions that we're having with DFAT and - with DFAT.

Q. I'm sorry, the letter says, "For several months we have been discussing how we should proceed in terms of establishing a suitable payment mechanism". You're not suggesting that the "we" there does not include the IGB and BHP, are you?

A. No, I do. It was not including - the intention of that "we" was not to include IGB in the "we". It was - I hadn't had discussions with the IGB. This was a draft letter that I was putting to the IGB to clarify.

Q. So that statement in the first sentence should be read as, "For several months BHP employees have been discussing amongst themselves how BHP employees should proceed in terms of establishing a suitable payment mechanism for the USD5 million of grain that BHP financed in 1996"; is that right?

A. Not quite. I'd say that I would interpret that now as my view that that "we" was capturing BHP and DFAT.

THE COMMISSIONER: Q. DFAT?

A. DFAT.

MR AGIUS: Q. And the "several months", then, is the period between 22 May and 21 June?

A. Yes.

Q. Which is less than one month?

A. It spans a couple of months, Mr Agius --

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Q. How does it span a couple of months, 22 May to 21 June?

A. It started in May, the discussions, and it's now in June, so I would - my intent of saying "several months" there would have been to try to give the IGB comfort that we'd been working on this case for a long period. But really we'd only been focused on it from - I'd only been aware of it from the discussions that we'd had with DFAT.

Q. I commenced by asking you where did you get that information "for several months we have been discussing how we should proceed"? Who told you that, or did you --

A. No, I've just written it.

Q. They're your words?

A. They're my words.

Q. To capture the period between 22 May and 21 June?

A. Correct.

Q. This is a rather odd letter to be writing to Zuhair Daoud if you genuinely had a belief that the provision of grain was a gift, is it not?

A. No, because now I'm at BHP, my state of mind at BHP, how I've been - following the DFAT meeting and the DFAT letter, obviously I've become informed that BHP had considered it to be other than what I had understood it to be while I was at AWB.

Q. Where did you get the information that's in the second paragraph?

A. Well, we got that information back in AWB, back in September, when the original transaction was being contemplated.

Q. And the next paragraph?

A. Well, that's the conversations that we've had with DFAT in December of - November/December of 1995.

Q. And the last paragraph?

A. That's knowledge that I've acquired somewhere around May 2000 - no, not 2000, May 1996.

Q. So somebody at BHP has given you to believe that it was always BHP's intention that, having shipped the goods, they would try to find a mechanism whereby the Iraqis would

1 pay for the wheat?

2 A. Yes.

3

4 Q. And therefore it had always been BHP's intention that
5 this not be a donation?

6 A. Yes.

7

8 Q. Nonetheless, you were aware that the matter had been
9 processed originally - that is, passed through DFAT and to
10 the UN - on the basis that it was a donation?

11 A. Yes.

12

13 Q. Did you think to bring it to the attention of anybody
14 at BHP that DFAT and the United Nations had been misled and
15 that that matter ought to be addressed?

16 A. I brought this to the attention of Jim Lyons and of my
17 manager, Norman Davidson Kelly.

18

19 Q. But you were writing this letter yourself. No-one
20 directed you to write this letter.

21 A. Jim and I prepared this letter with legal counsel of
22 BHP Petroleum, because of this particular issue that the
23 shipment had gone on the basis of a gift. That was my
24 understanding at AWB. Four or five months after the
25 shipment had gone on the basis of that understanding, DFAT
26 has alerted us to this particular issue and therefore I've
27 become aware that I think there was great uncertainty in
28 BHP as to what the arrangements were in Iraq.

29

30 Q. This letter doesn't speak of any uncertainty in Iraq.
31 It says:

32

33 You no doubt recall that originally it was
34 proposed that the IGB open an L/C in favour
35 of the AWB...

36

37 A. This was a letter, Mr Agius, that I drafted with chief
38 legal counsel in order to try and bring clarity on this
39 particular subject. I prepared this draft for my manager,
40 Norman Davidson Kelly, and I believe I left it on
41 Mr Davidson Kelly's desk.

42

43 Q. You drafted this letter on the basis that BHP was
44 still looking for payment for the 20,000 tonnes of wheat.

45 A. Yes.

46

47 Q. I had put to you that during the course of the meeting

1 on 22 May DFAT had been told that there had been a proposal
2 that you could obtain some form of side letter from the
3 Iraqis covering that 20,000 tonne shipment, and you've said
4 that you have no recollection of having said that; is that
5 the case?

6 A. Yes.

7
8 Q. Do you say that BHP had resolved after this meeting on
9 22 May not to reformulate the gift into a debt, but that
10 BHP had always regarded this as a matter for which there
11 had to be payment?

12 A. There's two questions there, Mr Agius. The first part
13 I think the answer - would you mind repeating the question?
14

15 Q. Do you say that BHP had resolved after this meeting on
16 22 May not to reformulate the gift into a debt?

17 A. No.

18
19 Q. You don't say that?

20 A. No.

21
22 Q. Is the reason why you say that because BHP had always
23 regarded this as a matter for which there had to be
24 payment?

25 A. There had to be some economic benefit, yes.

26
27 Q. So there was never a question of reformulating the
28 gift into a debt so far as your state of mind was
29 concerned?

30 A. No.

31
32 Q. You agree with me?

33 A. Yes.

34
35 Q. If we go over the page of this letter, or this draft
36 letter, dated 21 June 1996:

37
38 As far as our government officials are
39 concerned, post 986, there is now no
40 opportunity for the IGB/BHP/AWB to work a
41 new payment procedure with the U.N. that
42 could be retrospectively applied to
43 capture...

44
45 that shipment. You conclude by suggesting that BHP
46 continue to hold the original shipping documents for that
47 shipment and that, at a later stage, in accordance with the

1 original understanding, BHP would receive value by
2 presenting the original documents to the IGB/CBI. You said
3 that on the basis that, as at 21 June 1996, your
4 understanding was that BHP would at some date in the future
5 press for payment for the wheat?

6 A. Press for value, yes, press for value, which could
7 have included payment for the wheat.

8
9 Q. To receive value by presenting the original documents,
10 the original documents being what?

11 A. Would have been the shipment documents.

12
13 Q. And the value being to pay cash or to deliver oil to
14 the value of the LC in substitution for cash?

15 A. Or to win a prized oil field development right, and
16 I'm sure that if BHP had won those, then that would have
17 been an appropriate level of value for the company to
18 receive for that particular shipment.

19
20 Q. And was that the subject of discussions that you had
21 within BHP before you drafted this letter of 21 June 1996?

22 A. I talked to Jim Lyons about the matter, and Jim and I
23 prepared this letter in order to try and seek clarity.

24
25 Q. Well, Mr Lyons doesn't set policy at BHP, does he?

26 A. No.

27
28 Q. Who had given you to believe that at some stage in the
29 future BHP would seek to receive value by presentation of
30 the original documents to the IGB and CBI?

31 A. I think that might have been from Jim Lyons, that it
32 was uncertain as to how BHP were going to get value for
33 this particular cargo.

34
35 Q. Is that where the matter rested as far as you were
36 concerned? You put the draft on Mr Davidson Kelly's desk?

37 A. I think I had a subsequent conversation about the
38 matter with Mr Davidson Kelly and asked him if he received
39 my draft.

40
41 Q. What did he say?

42 A. He said, "I have received your draft and you don't
43 need to worry about it, I've got it all under control."

44
45 Q. Was that where the matter rested?

46 A. That's the last I heard of the matter until - that's
47 where it rested, yes.

1
2 Q. Until when?
3 A. I was written to - I was contacted by
4 Mr Davidson Kelly when I left - when I rejoined the AWB.
5
6 Q. That's the letter we saw when you were giving evidence
7 last week?
8 A. That's correct.
9
10 Q. So until you received that letter you heard no more
11 about the matter; is that right?
12 A. Correct.
13
14 Q. And you hadn't sought to generate any interest in the
15 matter yourself?
16 A. No.
17
18 Q. May we take it, then, that until you received that
19 letter, so far as you were concerned, the matter was dead?
20 A. No.
21
22 Q. What life did it have in it?
23 A. Well, Norman was going to take over the matter and
24 deal with the issue. So that was - certainly the state of
25 mind that DFAT had communicated was the matter was dead,
26 but there's no way that BHP had accepted that as the
27 position.
28
29 Q. So it was left with Norman Davidson Kelly on the basis
30 that anything further that was going to be done about this
31 would be done by him?
32 A. Yes.
33
34 Q. And he never came back to you again prior to that
35 letter?
36 A. No.
37
38 Q. Not even a telephone conversation to say, "Look, I'm
39 thinking of sending you a letter to this effect"?
40 A. No.
41
42 Q. There were no email exchanges between you and him, or
43 you and anybody else, about that matter before you received
44 that letter?
45 A. Not that I recall.
46
47 Q. What about DFAT? Did you take the matter up with DFAT

1 again?

2 A. No.

3

4 Q. Definitely not?

5 A. Definitely not.

6

7 Q. Did you not have a conversation with a DFAT officer on

8 3 July 1996 where you discussed again the earlier BHP

9 proposal to provide wheat on letters of credit, and were

10 you not told again that that interpretation of the

11 sanctions - that is, the interpretation that DFAT held -

12 was contrary to the Iraqis' view?

13 A. No, I don't recall that, Mr Agius.

14

15 Q. Were you not told that the ministers - that is, the

16 Australian ministers - had determined not to put the

17 proposal up to the sanctions committee and that their

18 ruling was final?

19 A. No, I don't recall that conversation.

20

21 Q. Could we bring up, please, BHP.0004.0003. This is a

22 series of emails, Mr Stott. It commences with an email

23 from Mr Worthington to you, at 0004. Could we go to that,

24 please. If we go to the bottom of page 0004, you'll see

25 the very last three lines from Peter Worthington --

26 A. Yes.

27

28 Q. -- to you on Tuesday, 25 February 1997?

29 A. Yes.

30

31 Q. If we could go to 0005, you'll be able to read, and I

32 ask you to do that, the content of that email.

33 A. Yes, Mr Agius, I've read that letter.

34

35 Q. Have you seen the second page?

36 A. Sorry, I haven't seen the second page.

37

38 Q. 0006. Yes. I don't want to take you through the

39 detail of that email, but it's apparent that there was a

40 proposal to find a way of lending the Iraqis up to \$100m?

41 A. It appears to be swapping - the proposal was swapping

42 old debt for the new debt, so yes.

43

44 Q. And Mr Worthington finishes that email with the words:

45

46 Whilst our earlier 'loan' will stand us in

47 good stead, we cannot be assured it will

1 underwrite a project capture.

2

3 Did you understand that to be a reference to the provision
4 of the 20,000 tonnes of wheat on a deferred payment basis?

5 A. Yes.

6

7 Q. Then if we can come to your reply, if we go to 0003,
8 at the bottom of the page - this is the next day,
9 Wednesday, 26 February. I wonder if you could read the
10 last quarter of that page and then your reply over the
11 page. This is 26 February, the next day, that's the day
12 after Mr Worthington's email of 25 February.

13 A. Yes, I've read that bit.

14

15 Q. And over the page. Have you read that, Mr Stott?

16 A. I haven't finished reading it, Mr Agius. I've
17 finished reading it, Mr Agius.

18

19 Q. Thank you. You will observe, then, that you had said
20 to Mr Worthington that you'd had an exploratory chat to
21 both DFAT and EFIC "and basically we are going to run up
22 against the same problem that we experienced last time",
23 and you went on to say:

24

25 Turning specifically to the proposal, the
26 problem that we ran up against last time,
27 with the loan, is that under 661
28 governments must prevent their nationals
29 and any person from providing funds or any
30 other financial or economic resources to
31 Iraq. Our governments interpretation of
32 this, is that the fundamental requirement
33 of sanctions is absolutely no credit. Jim
34 and I spent some time in Canberra, last
35 year, trying to convince/encourage/persuade
36 the Govt to test the interpretation by
37 submitting an application to the U.N.
38 based on a credit payment arrangement for
39 humanitarian goods. However, at that time
40 bureaucrats responded, that Ministers would
41 not endorse our proposal and therefore the
42 Govt was not prepared to make a submission
43 to the U.N. Submissions to the U.N. can
44 only be made through a government. The
45 Govt sought advice from their U.N.
46 colleagues and were adamant that their
47 interpretation was correct. They also

1 claim that they have a responsibility to
2 the U.N. to police applications and not clog
3 up the system with applications that they
4 know would not be acceptable. They were
5 therefore not prepared to jeopardise their
6 credibility.

7
8 From discussions with DFAT today nothing
9 appears to have changed. We pushed them
10 pretty hard last time round and it got us
11 nowhere. Tom even worked on a few
12 Ministers. We can certainly try again, but
13 unless we can get Ministers to direct
14 officials, despite their advice to the
15 contrary, to submit an application, then
16 again I don't think we will get anywhere.

17
18 May we take it, then, that that email was an accurate
19 reflection of your view?

20 A. Yes.

21
22 Q. That there was no prospect of getting past government
23 to the UN any proposal that humanitarian goods be provided
24 on credit; is that right?

25 A. No, that's not right. Where does it say that?

26
27 Q. That's the substance of what I've just read to you:

28
29 ...the problem that we ran up against last
30 time, with the loan, is that under 661
31 governments must prevent their nationals
32 and any person from providing funds or any
33 other financial or economic resources to
34 Iraq. Our government's interpretation of
35 this is that the fundamental requirement of
36 sanctions is absolutely no credit.

37
38 A. Yes.

39
40 THE COMMISSIONER: Q. That's a reference back to the
41 meetings you had in May the previous year?

42 A. Yes.

43
44 MR AGIUS: Q. May we take it, then, that as at the date
45 of this email it was your view that the Australian
46 Government's position was that the Iraqis should not
47 receive humanitarian goods on credit; is that right?

1 A. Yes.

2

3 Q. And it was your view that Iraqis should not receive
4 humanitarian goods on any terms which provided for deferred
5 payment, at least until the sanctions were lifted?

6 A. Yes.

7

8 Q. When you spoke in the third paragraph --

9

10 THE COMMISSIONER: You said "your view" - "your view" or
11 the government's view?

12

13 MR AGIUS: Q. Well, that was your view of the
14 government's position, was it not, that the Iraqis should
15 not receive humanitarian goods on any terms which provided
16 for deferred payment at least until sanctions were lifted?

17 A. Yes.

18

19 Q. In the email you said:

20

21 Turning specifically to the proposal, the
22 problem that we ran up against last time,
23 with the loan...

24

25 What were you referring to when you said "with the loan"?
26 Were you referring to the \$5m worth of wheat for 20,000
27 tonnes?

28 A. I think I must have been.

29

30 Q. So by the time of this email you had adopted BHP's
31 position in relation to this that in fact it was a loan and
32 not a donation?

33 A. This email is written at a time when I am - in
34 response to Mr Worthington's suggestion and I'm using the
35 recollection of my events that I understood to be in place
36 in 1996.

37

38 Q. Well, what's the answer to my question? By the time
39 of this email, had you adopted BHP's position in relation
40 to this, that in fact it was a loan and not a donation?

41 A. No.

42

43 Q. You hadn't adopted that position?

44 A. No, because BHP hadn't adopted that position.

45

46 Q. Well, you called it a loan in this email; is that
47 right?

1 A. Yes.
2
3 Q. Mr Worthington had referred to it as a loan in
4 inverted commas in the email to which you were replying.
5 Doesn't that mean that you had adopted BHP's position, that
6 the provision of this wheat was in fact a loan?
7 A. No.
8
9 Q. What was your position then as at the date of this
10 email, 26 February 1997? Did you regard it as a loan, or
11 did you regard it as a donation?
12 A. I regarded it as a gift that BHP expected to receive
13 value for in some form.
14
15 Q. So a loan?
16 A. Well, that was one of the options, a repayment of a
17 loan. One of the other options was through oil exports.
18 Another option was through if BHP had won an oil field
19 development, they would not have pursued this. So there
20 was a variety of ways that BHP could receive value. This
21 was one of those.
22
23 Q. It was a provision of wheat in circumstances where
24 something was going to be given in return for it?
25 A. Yes.
26
27 Q. Cash, oil, or something else of equivalent or greater
28 value?
29 A. Yes.
30
31 Q. We can't call that a donation, can we?
32 A. Well, I think you can call it a donation, and we spent
33 considerable time the other day debating this point.
34
35 Q. But here we have an email where you use the word
36 "loan", and that's what I'm drawing to your attention.
37 A. Yes, I have used the word "loan".
38
39 Q. Doesn't that mean that we can't really call that a
40 donation?
41 A. The donation - a gift/donation was made by a company
42 that expected to receive some economic benefit for that,
43 and, Mr Agius, we - that's the answer to your question.
44
45 Q. Now, if we go back to 0003, you'll see that
46 Mr Worthington responded to your email later. The email I
47 want to direct your attention to is the one at the top of

1 the page from you to Mr Worthington on 27 February at
2 11:07; do you see that? Would you read that email at the
3 top of the page?

4 A. I've read it, yes.

5
6 Q. You say:

7
8 Mark Pierce and Mal Skelly will be with us
9 tomorrow participating in the Iran country
10 risk session...I am happy to revisit the
11 subject with them again. My frank
12 assessment, from conversations we have had
13 to date, is that they will not play ball on
14 loans.

15
16 You go on to say at the end of that paragraph:

17
18 Peter, we need a new angle if we are going
19 to have any chance of being able to sway
20 DFAT. Let's discuss.

21
22 Did you come up with any new angle?

23 A. No.

24
25 Q. After 27 February, and any discussion thereafter, what
26 was the state of play concerning approaching DFAT about
27 deferred payment for shipment of humanitarian goods?

28 A. Nothing progressed.

29
30 Q. Your view still remained that it would not be
31 something favourably viewed upon by DFAT; is that right?

32 A. Correct.

33
34 Q. You refer to "exploratory chat to both DFAT and EFIC"
35 at the bottom of that page, in your email of 26 February.
36 What discussions did you have with personnel from DFAT and
37 EFIC?

38 A. It's nine years ago, Mr Agius. I just don't recall.
39 I'm trying, but I just don't recall. I'm sorry.

40
41 MR AGIUS: Mr Commissioner, I'll tender that document.
42 I'll ask that, but for the portions I've read, it remain a
43 confidential exhibit. We need to clarify with BHP the
44 source of that document, whether or not there is still a
45 claim for commercial in confidence.

46
47

1 EXHIBIT #124C SERIES OF EMAILS, COMMENCING WITH AN EMAIL
2 FROM MR WORTHINGTON TO MR STOTT, COMMENCING WITH
3 BARCODE BHP.0004.0003
4

5 THE COMMISSIONER: That is confidential, save for the
6 portions read on to the public transcript.
7

8 MR AGIUS: Q. Can we bring up, please, BHP.0004.0071.
9 This is an email from Jill Roseman to a number of persons,
10 including yourself, regarding Iraq negotiations as at
11 Tuesday, 7 October 1997. I wonder if you'd read that.

12 A. Yes, I've read that, Mr Agius.
13

14 Q. Clearly this email is written against the background
15 of a proposal to have the board agree to a US\$100m loan to
16 Iraq; is that right?

17 A. Which is the subject matter in the previous document,
18 yes.
19

20 Q. Ms Roseman, at the end of this email, says:
21

22 It should also incorporate the fact that we
23 have already loaned US\$5 million to Iraq
24 and explain how this is accommodated in the
25 proposal.
26

27 A. Yes.
28

29 Q. You took that to be a reference to the US\$5m for the
30 20,000 tonnes of wheat?

31 A. Yes.
32

33 Q. Was there a fresh proposal ever drawn up which
34 indicated how that US\$5m to Iraq was accounted for or
35 accommodated?

36 A. Not that I'm aware.
37

38 MR AGIUS: I tender that email, BHP.0004.0071.
39

40 EXHIBIT #273 EMAIL FROM JILL ROSEMAN TO A NUMBER OF
41 PERSONS, INCLUDING MR STOTT, REGARDING IRAQ NEGOTIATIONS AS
42 AT TUESDAY, 7/10/1997, BARCODED BHP.0004.0071
43

44 MR AGIUS: Q. Mr Stott, did you take any more interest
45 in this matter of the US\$5m loan or the provision of the
46 20,000 tonnes of grain whilst you remained at BHP?

47 A. Not that I'm aware.

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Q. We know that you received an email from Mr Davidson Kelly enclosing a draft of a letter to you in September. Could we bring that up, please?

THE COMMISSIONER: AWB.0106.0104.

MR AGIUS: Q. That is an email from Mr Davidson Kelly enclosing a draft of a letter to AWB regarding what he called the BHP receivable. Now, is that the email and the draft letter that you were referring to in your evidence earlier today, when you were referring to the next time you became aware of this matter?

A. I believe that's right.

Q. I'm sorry?

A. I believe that's correct, yes.

Q. And that was followed up by a letter to you in terms of that draft but an engrossed letter; is that right?

A. Yes, yes.

Q. Is this a matter to which you've given consideration since you last gave evidence?

A. This note?

Q. No, the note and the circumstances in which, whilst you were at AWB, you became involved in, in any way, any proposal to assist BHP or Tigris and Mr Davidson Kelly in recouping money for the 20,000 tonnes of wheat?

A. I've been giving considerable thought to the discussions that we have had here, Mr Agius.

Q. And your position is that the receipt of that email and the attached draft letter to you was the first that you'd heard about this matter since you'd been at BHP?

A. That's my position, Mr Agius.

Q. Indeed, I think you went further than that when you were last here: in substance you say it's the first time since you've left BHP that you've given the matter any thought?

A. I haven't got the transcript of my evidence in front of me and what I've provided you, Mr Agius, so I assume that what you've said to me is what I've said. I can't be certain as to what I've said.

1 Q. Could we bring up, please, BHP.0004.0082. This is a
2 series of emails, Mr Stott. The first is the one at the
3 bottom of the page, from you, dated 2 May 2000, to
4 Mr Davidson Kelly, subject "Iraq":

5
6 Norman,

7 In January 2001, it is 5 years since BHP
8 supplied the grain and payment of
9 US Dollars 8,052,550 becomes due. We need
10 to start thinking about what we want to do
11 as the system will need to be appropriately
12 warmed up, starting at least 6 months, in
13 advance if we want to recover the debt.
14 Happy to discuss.

15 Cheers

16 Charles

17
18 That was an email that you sent in May of 2000, Mr Stott,
19 was it not?

20 A. Yes.

21
22 Q. Months before the receipt of any email or letter from
23 Mr Davidson Kelly about recovering this debt; is that not
24 right?

25 A. Sorry?

26
27 Q. So your evidence about this to this point in time has
28 not been accurate, has it?

29 A. No, it's been completely accurate. It's my state of -
30 you put in front of me a document, Mr Agius, that I have
31 not seen since May of 2000, I have no access to the
32 information that you are presenting to me, so the evidence
33 that I have provided to you up until seeing this document
34 has been correct. But I have got no idea what documents
35 you have got, Mr Agius. I've got no idea. So I have
36 answered the questions under oath honestly and correctly to
37 you and the Commissioner. Now, this document has - you've
38 brought this document up and this is a document that I must
39 have written in May 2000.

40
41 Q. If this document is accurate, then it means that the
42 evidence that you gave on the last occasion and the
43 evidence that you gave today about the circumstances in
44 which you came to be involved in the recovery of this debt
45 once you moved back to AWB must not be accurate; isn't that
46 right?

47 A. No, it's not right.

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Q. How can the evidence that you gave on the last occasion and this morning on that topic be accurate, in the light of this email? The word I've used is "accurate", Mr Stott.

A. I believe it to be accurate, Mr Agius. I believe all the evidence that I have given you is accurate. Even in light of you putting this email in front of me today, that evidence is still - I still remain by the evidence that I've provided you and the Commissioner, and that it is accurate.

Q. How can it be, Mr Stott, that the first you heard again about this debt was in September 2000, when we see an email from you in May of 2000 raising the very matter of the debt with Mr Davidson Kelly, four months or more before he wrote to you?

A. Had you presented this evidence to me, or this document to me, last week, or if I had have had it made available to me, I may have recalled the events differently. You've just presented this document to me that shows that I have written to Norman about this particular cargo. So I don't - my state of mind, since you've put this document in front of me, has just been improved because you've told me that - you've provided me this document. So I don't retract any of my prior evidence. That was the best of my knowledge at that time.

Q. What's the best of your knowledge now?

A. Well, I've obviously written, in light of this particular document that you've put in front of me, in May 2000 - I've written to Norman advising him that it is now five years since BHP supplied the cargo and warning him that he'd better start thinking about what he needs to do.

Q. What interest did you have to warn Mr Davidson Kelly of that matter in May of 2000?

A. Well, it's getting close to the anniversary of the event.

Q. What event?

A. Five years since the cargo was shipped.

Q. And the payment becomes due?

A. The payment becomes due.

Q. What interest did you have in warning

1 Mr Davidson Kelly of that?
2 A. None.
3
4 Q. Why do it?
5 A. Because it's now five years. I'm still employed by
6 BHP --
7
8 Q. No, you're not.
9
10 THE COMMISSIONER: Q. No, you're not.
11 A. Yes, I am, 2 May 2000.
12
13 MR AGIUS: Q. So what interest did you have as an
14 employee of BHP that BHP follow this up?
15 A. This is - they've made a donation five years earlier
16 which they expect to receive value for. Five years post
17 the anniversary of the event is one of the trigger points
18 at which they would expect to get value. I've reminded
19 Norman that it's now coming up - in this letter, or in this
20 email to Norman, that, you know, five years is coming up.
21
22 Q. Didn't you believe that that had been a gift?
23 A. When I was - my state of knowledge at the AWB,
24 Mr Agius, was that it was a gift. That was my state of
25 knowledge at the AWB. We've been through this morning, in
26 the evidence I've provided you and the Commissioner, that
27 my state of knowledge changed when I arrived at BHP. When
28 I arrived, I beg your pardon, when we went through the May
29 and June correspondence.
30
31 Q. So you then whilst you were at BHP, from May onwards,
32 involved yourself in cranking up BHP's efforts to recoup
33 that debt?
34 A. I have alerted Norman to the fact that the five-year
35 anniversary is coming up. That's what this email has been.
36
37 Q. You alerted him to that and to the amount of the debt,
38 and you went on to say:
39
40 We need to start thinking about what we
41 want to do as the system will need to be
42 appropriately warmed up...
43
44 A. Yes.
45
46 Q.
47

1 ...at least 6 months in advance if we want
2 to recover the debt.

3
4 A. Yes.

5
6 Q. Did you have discussions with him after this?

7 A. It says "let's discuss", but I don't recall
8 discussions. I simply don't recall discussions after this
9 with him on the subject.

10

11 Q. Not at all?

12 A. No, I don't recall, I'm sorry.

13

14 Q. Do you recall any discussions with him after this
15 prior to your receipt of the email and draft letter from
16 him when you were at AWB on 28 September?

17 A. Well, I think in evidence today I've said I thought I
18 received a phone call from Mr Davidson Kelly before I got
19 that letter when I was at AWB.

20

21 Q. Did you leave BHP in the expectation that BHP would be
22 contacting you at AWB for assistance in recouping this
23 debt?

24 A. No.

25

26 MR AGIUS: I tender BHP.0004.0082.

27

28 EXHIBIT #274 SERIES OF EMAILS, THE FIRST BEING FROM
29 MR STOTT TO MR DAVIDSON KELLY, SUBJECT "IRAQ",
30 DATED 2/5/2000, BARCODED BHP.0004.0082

31

32 MR AGIUS: Q. Could we bring up, please, BHP.0004.0083.
33 Your email to Mr Davidson Kelly was 2 May. This email is
34 dated 9 May. It's not directed to you. It's from
35 Mr Davidson Kelly to Mr Aiken, copied to Mr Harvey.
36 Mr Davidson Kelly says:

37

38 I don't know how familiar you are with the
39 details, but there is the strong
40 possibility that the Iraqis will owe BHPP a
41 total of around US\$8 million under a debt
42 which crystallises in 6 months time.

43

44 I would prefer to fill you in in person, or
45 Tom can easily do that. I think it would
46 be a good idea for Tom and me to work
47 through the issues with Jim Lyons and

1 Charles Stott, who were involved in the
2 original transaction. It is quite complex
3 as there are DFAT and UN issues to address.
4 We could then discuss with you a
5 recommendation either to proceed to attempt
6 recovery, with draft plan of action, or a
7 recommendation that we drop the whole
8 thing. I would be reluctant to recommend
9 the latter course of action without at
10 least an internal review, as there is a lot
11 of potential cash at stake. No hurry, and
12 Jim is on leave until early June in any
13 event.

14
15 Now, had you had discussions with Mr Davidson Kelly before
16 he sent that email on 9 May 2000?

17 A. No.

18
19 Q. He speaks there of it being a good idea for Tom, who
20 we take to be a reference to Mr Harley, and himself to work
21 through the issues with Mr Lyons and yourself. Did you
22 work through those issues with Mr Lyons, Mr Harley and
23 Mr Davidson Kelly?

24 A. No, I don't believe so.

25
26 EXHIBIT #275 EMAIL FROM MR DAVIDSON KELLY TO
27 MR PHILLIP AIKEN, DATED 9/5/2000, BARCODED BHP.0004.0083

28
29 MR AGIUS: Is that a convenient time, Commissioner?

30
31 THE COMMISSIONER: Yes. We will adjourn until 2pm.

32
33 LUNCHEON ADJOURNMENT
34
35
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47

1 UPON RESUMPTION:

2

3 MR AGIUS: Could we bring up, please, BHP.0004.0081.

4

5 Q. This is an email from Mr Davidson Kelly to Mr Aiken of
6 Friday, 19 May 2000. I wonder if you would read that,
7 Mr Stott.

8 A. Yes, I've read that, Mr Agius.

9

10 Q. Were you aware of the proposal contained in that email
11 before you left BHP?

12 A. No.

13

14 Q. Did you ever become aware of a proposal that Norman
15 Davidson Kelly, through Atlantic Oil and Gas Management, a
16 company, would take over BHP's interests in Iraq?

17 A. No.

18

19 Q. Were you aware of any association between a private
20 company and BHP Petroleum concerning BHP's interests in
21 Iraq, at any time?

22 A. Not in May 2000.

23

24 Q. Not in May 2000?

25 A. No.

26

27 MR AGIUS: I tender that email, Mr Commissioner.

28

29 EXHIBIT #276 EMAIL DATED 19/5/2000, BARCODED BHP.0004.0081

30

31 MR AGIUS: Q. Could we bring up, please, exhibit 224,
32 which is AWB.5009.0368. This was your email to Mr Davidson
33 Kelly after you had been into Iraq in October 2000. In it
34 you say in the third line:

35

36 Delivered a copy of your letter to my
37 counterparts and at the same time explained
38 the background to the shipment.

39

40 What background did you explain - the background that you
41 had as an AWB employee that that shipment had been a gift,
42 or the background that you had as a BHP employee that BHP
43 was looking to be paid for that shipment?

44 A. I don't recall, but it would have probably been the
45 BHP background.

46

47 Q. Why would you do that as an employee of the AWB?

1 A. Norman has written to me asking me to carry a letter,
2 which I undertook to do.
3
4 Q. But you knew that AWB had regarded that delivery of
5 wheat as a gift from BHP?
6 A. Back in 1995, yes.
7
8 Q. Well, so far as AWB was concerned, nothing had
9 changed; is that right?
10 A. In 1995 nothing had changed.
11
12 Q. No, between 1995-1996 and 16 October 2000 had anything
13 changed at AWB, from the perspective of AWB, that that
14 shipment should be regarded as anything other than a gift?
15 A. Mr Kelly wrote to us in September characterising the
16 repayment of the cargo, so in September 2000, when he wrote
17 to us, that's what I understood it to be.
18
19 Q. Did you then, as an AWB employee, feel that you ought
20 to go back to DFAT and to the UN and to inform them that
21 indeed this was not a gift, that this was a matter where
22 BHP was requesting repayment?
23 A. No, that didn't enter my mind at that time.
24
25 Q. You knew from the letter from DFAT to Mr Harley, back
26 in May of 1996, that, as far as the Department of Foreign
27 Affairs and Trade was concerned, the January delivery of
28 wheat was a closed matter and that it must remain closed,
29 the shipment having been sent and received in terms
30 notified to the UN?
31 A. Yes, I knew that in May 1996.
32
33 Q. But you also knew that in 2000, didn't you?
34 A. No, because in May 1996 - and we talked about that in
35 this morning's session - I drafted the letter to Mr Daoud.
36 I was told that I didn't need to worry about this subject
37 matter any further, it would be handled by Mr Davidson
38 Kelly. The manner in which Mr Davidson Kelly wrote to me
39 in that original letter, it indicated that he had had
40 subsequent discussions with DFAT. So, therefore, it did
41 not enter my mind that there was ever an outstanding issue
42 that needed to be resolved.
43
44 Q. What did Mr Davidson Kelly tell you about his
45 discussions, his subsequent discussions with DFAT?
46 A. I go back to the letter, the email that he sent to me.
47 That's what has obviously given me comfort. It has not

1 entered my mind that this was still an outstanding issue
2 when Mr Davidson Kelly wrote to me in 2000. I had been
3 provided comfort in the manner in which Mr Davidson Kelly
4 has written to me, and in the covering email that we looked
5 at this morning, Mr Agius.

6

7 Q. This is exhibit 212, in which Mr Davidson Kelly asks
8 you for comments on his letter and says:

9

10 Tigris is an Aussie registered company and
11 enjoys the support of our friends at DFAT
12 who, as I told you, are interested in the
13 outcome of the discussions to recover the
14 obligation.

15

16 That portion?

17

18

19 Q. So you took that to mean that DFAT had changed its
20 view, did you?

21

22 A. No, I didn't - I didn't recall the 1996 correspondence
23 with DFAT when Norman wrote to me in 2000, so that - the
24 way he has written to me in 2000, I have assumed that DFAT
25 is interested in the outcome. I have taken that to be an
26 understanding that there is - DFAT is interested in the
27 outcome. I didn't recall the previous correspondence in
28 2000 that I was privy to in 1996.

28

29 Q. Did you ever recall that correspondence?

30

31 A. Only as it is presented - being presented to me in the
32 Commission here, in the course --

32

33 Q. Mr Stott, there was more than correspondence of
34 27 May; there was also the meeting on 22 May 1996 --

35

36

37 Q. -- where you had been told in spades, face to face,
38 about the position of DFAT?

39

40 A. But, Mr Agius, I was told when I went through the May
41 and June meetings - sorry, May meetings and June, and
42 I subsequently drafted that letter, I need not bother
43 myself with that, it will be handled by Mr Davidson Kelly.
44 So that was the end of the matter as far as I was
45 concerned.

45

46 Q. That's all well and good if you are wearing your BHP
47 hat, but when you came to the Australian Wheat Board - and

1 the reputation of the Australian Wheat Board is important
2 to you as an employee of the Australian Wheat Board - why
3 is it that you did no more than simply rely upon the
4 two-line reference in Mr Davidson's Kelly's email --
5 A. I didn't rely --

6
7 Q. -- to satisfy yourself that the proposal to recoup
8 this debt from the Iraqis was something that had been
9 notified to DFAT?

10 A. I relied on that, Mr Agius. I also relied on the
11 assignment that - the "to whom it may concern" letter
12 signed by Mr Aiken. So I relied on the fact that there
13 was - any issues that were outstanding, that I did not
14 recall at the time of September, that obviously had all
15 been rectified. So I just did not recall that
16 in September. I relied on the fact that BHP would have
17 done their work and that Mr Aiken would not have signed the
18 letter confirming - the letter that he signed and you
19 presented to me the other day, would not have signed that
20 letter to me unless BHP had done their work.

21
22 Q. That letter doesn't say anything about DFAT being
23 aware of any attempt to recoup the cost of this wheat as a
24 debt, does it?

25 A. I haven't got that letter in front of me.

26
27 Q. Well, you have just raised that letter as something
28 that you relied upon in this connection. What is there
29 about that letter from Mr Aiken that you recall that has
30 anything to do with DFAT's knowledge of BHP's attempt to
31 recoup money as a debt for this wheat?

32 A. I would be surprised if the chief executive officer of
33 BHP Petroleum would assign an interest if it had not been
34 clarified or confirmed.

35
36 Q. If it had not been?

37 A. If it had not been - any outstanding issues that may
38 have been had not been confirmed or sorted through.

39
40 Q. What, with DFAT?

41 A. Well, with whoever.

42
43 Q. Why would you assume that, because Mr Aiken had
44 written a "to whom it may concern" letter on 13 September
45 2000, indicating that BHP Petroleum had assigned to Tigris
46 its rights to receive the value from the Grain Board of
47 Iraq, that matter had been referred to DFAT?

1 A. I didn't say had been referred to DFAT.

2

3 Q. There is nothing in that letter which would give you
4 any reason to believe that DFAT knew anything at all about
5 BHP's attempt to recoup this debt whilst sanctions were
6 still in place, is there?

7 A. I didn't say there was.

8

9 Q. Well, then, how did that give you any comfort at all?
10 How did that letter give you any comfort at all on this
11 issue as to whether DFAT were aware of BHP's attempts to
12 recoup this debt?

13 A. Because it's been signed by Mr Aiken, so I assume that
14 Mr Aiken would not sign a letter without understanding the
15 full background of why he is signing that particular letter
16 without going through the full background and doing the due
17 diligence.

18

19 Q. How would that due diligence involve in any way
20 checking with DFAT? What did you have in mind that that
21 due diligence would involve in that regard?

22 A. I had nothing in mind.

23

24 Q. In fact, you had nothing in mind about DFAT when you
25 read the "to whom it may concern" letter, did you?

26 A. No, that's right.

27

28 Q. So it didn't give you any comfort on the issue as to
29 whether or not DFAT had been informed that BHP was now
30 seeking to treat that as a debt, did it?

31 A. No.

32

33 Q. So all you had was the two-line entry on Mr Davidson
34 Kelly's email to you that friends in DFAT were interested
35 in the outcome of the obligation?

36 A. Yes.

37

38 Q. On the basis of that, you went to Iraq and, in
39 dealings with the Iraqis in October 2000, presented the
40 deal as one in which the Iraqis were indebted to BHP?

41 A. Yes.

42

43 Q. Without at any time making inquiries yourself of the
44 Department of Foreign Affairs and Trade?

45 A. That's correct.

46

47 Q. Despite the fact that you had strong connections with

1 the Department of Foreign Affairs and Trade?

2 A. Yes.

3

4 Q. Despite the fact that it would have simply been a
5 matter of picking up the phone and making an inquiry?

6 A. If I thought it was an outstanding issue at that time,
7 Mr Agius. I did not consider it as an outstanding issue.
8 The manner in which I have been written to, it has never
9 entered my mind at that point of time that this is still an
10 outstanding issue. I have just completely forgotten.

11

12 Q. I have heard you say that, Mr Stott. I just want to
13 draw to your attention that it would seem that you were
14 championing the cause of BHP to provide humanitarian goods
15 to Iraq with deferred payment plans right up until the time
16 that you left BHP, and that you were consistently being
17 knocked back by DFAT. Do you say that you just forgot all
18 about that when it came to reading the 28 September letter
19 from BHP?

20 A. I completely disagree with the way that you have built
21 the proposition on the facts as presented. I can see how
22 you are doing that, but I completely disagree with that
23 hypothesis.

24

25 Q. Do you disagree with the first part of the proposition
26 that I put to you, that you had been --

27 A. I do.

28

29 Q. -- championing BHP's cause to provide humanitarian
30 goods to Iraq on deferred payment?

31 A. I do disagree with that proposition.

32

33 Q. Do you disagree with the proposition that you had been
34 pressing DFAT that their interpretation of the sanctions
35 was wrong and that the sanctions did not prohibit the
36 provision of humanitarian goods on deferred payment?

37 A. In 1995, when BHP - sorry, when DFAT and myself were
38 in discussions around how we could fund cargoes into Iraq,
39 I was strongly of the view, as has been recorded in the
40 documents, that DFAT's interpretation was far more strident
41 than the Iraqis had indicated to me with the UN Security
42 Council members said it would be.

43

44 Q. And you expressed that view in 1996 and 1997, didn't
45 you?

46 A. I expressed that view - I have held that view - I have
47 held that view that it has been strident in 1996 and 1997.

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Q. You expressed that view to DFAT in 1996 and 1997, didn't you?

A. I don't recall expressing that view to DFAT in 1996. You have produced a document which suggests I did, but I don't recall doing that, Mr Agius.

Q. So you won't concede that you did express that view to DFAT in 1996 and 1997?

A. No, I won't.

Q. I took you last week through the chronology of documents, some of which were addressed to you and some of which were not, relating to AWB's efforts to assist Tigris in recouping this debt. I had asked you whether you received a copy of the memo that Mr Long had drawn to the attention of the members of the corporate risk committee. You said that you had not. Could we bring up, please, exhibit 24. It is AWB.0129.0161. At the top of the page you will see an email from Michael Long to "executive". Your name is not specifically mentioned on that email or in the two emails that follow. Did you receive that email?

A. I don't recall receiving this email, Mr Agius.

Q. Would you have regarded yourself as a member of the executive on 6 November 2002?

A. No, I regard myself as an ELG member. I'm not sure who Michael would have on his "executive" listing.

Q. That's why I am asking you whether you received the email.

A. I don't recall receiving the email, Mr Agius.

Q. Could we bring up, please, exhibit 25 - AWB.0129.0169. This is an email from Mr Whitwell to Mr Lindberg, Mr Ingleby, yourself, and a number of other persons, of 7/11/2002. It summarises a visit to Iraq made by himself and Mr Hogan in October. Did you receive that email?

A. It appears that I have received it, but I don't recall it. I don't recall receiving it.

Q. Well, it was addressed to you as the third person in a line, with Mr Lindberg being first, and it related to a recent trip to Iraq. You would have read that, would you not, Mr Stott?

A. Not necessarily, Mr Agius. My focus at this time was

1 on pursuing the growth agenda for the company. I was in
2 the process of trying to build a strategic stake in one of
3 our major companies that we had an interest in. I have
4 moved out of international sales and marketing, and other
5 people are looking after this particular subject. So
6 I don't recall reading or seeing this email.

7
8 Q. Did you become aware in November 2002 that the Tigris
9 debt had cabinet approval in Iraq for repayment?

10 A. I don't recall if I became aware of that.

11
12 Q. Did you read the trip report that is attached to this
13 email?

14 A. I don't recall.

15
16 Q. Perhaps we could bring it up - AWB.0129.0154. It is
17 exhibit 26. A third of the way down the first page it
18 reads:

19
20 Suggested following proposal.

21 1. Offsetting vessel claims (iron filings)
22 against Tigris (BHP) debt - approx USD2
23 million.

24
25 Further down:

26
27 IGB - confused abt amount and offer made by
28 Tigris...where Tigris would accept simple
29 interest amount.

30 AWB advised we were not involved in the
31 actual amount, but only the mechanism.

32 Actual amount would be agreed between
33 Tigris and relevant authority.

34
35 And over the page, 0155, under the heading "Tigris Issue":

36
37 Simple interest amount to be recovered by
38 Tigris through loading up the next Phase 13
39 wheat business. This has received Cabinet
40 approval.

41
42 Further down:

43
44 AWB to advise re payment mechanism of
45 rebate and to brief Tigris re Iraqi
46 position on their debt. Tigris to have
47 arranged figures and agreed prior to AWB

1 visit to Iraq in December.

2

3 Did you read that material that was sent to you, Mr Stott?

4 A. No, I don't believe I did, Mr Agius.

5

6 Q. Did you become aware of that material --

7 A. No, I don't believe I did.

8

9 Q. -- at that time; that is, in November of 2002?

10 A. I don't believe I have - was aware of that in November
11 2002.

12

13 Q. Could we bring up, please, AWB.0104.0293. This is a
14 letter from Mr Davidson Kelly to Mr Whitwell, dated
15 17 November 2002. Did you see that letter in
16 about November of 2002?

17 A. I don't believe I have seen that letter in 2002.

18

19 Q. It enclosed a letter to Dr Yousif Abdul Rahman, also
20 dated 17 November 2002. Could we go to the next page,
21 please, 0294. Did you see that letter in November 2002?

22 A. Could I just have a moment to read it, please. Could
23 we just go up to the top, to see who it is addressed to?

24

25 Q. It is addressed to Dr Yousif Abdul Rahman?

26 A. No, I don't believe I have seen that letter in 2002.

27

28 MR AGIUS: I tender those two documents, Mr Commissioner.

29

30 EXHIBIT #277 DOCUMENTS BARCODED AWB.0104.0293 AND 0294

31

32 MR AGIUS: Q. Can we bring up confidential exhibit 81,
33 please, AWB.0147.0125. This was Mr Whitwell's email to
34 Mr Lindberg, Mr Ingleby, Mr Geary, Ms Scales and yourself
35 and others, confirming the new contracts to Iraq. Did you
36 open that email, Mr Stott?

37 A. I don't recall opening that email, Mr Agius.

38

39 Q. Do you recall the content of the email?

40 A. No.

41

42 Q. Can we bring up, please, AWB.5019.0231. The first
43 document on the page should be an email from David Johnson
44 to Mr Whitwell and others. It is not the document I can
45 see on the screen.

46

47 THE COMMISSIONER: What was the reference, 5019.0231?

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MR AGIUS: Yes.

THE COMMISSIONER: That's the document on the screen.

MR AGIUS: There must have been a mistake in the barcoding. I will show a document to the monitor. Could we have those documents up on the screen. There must have been a duplication of barcoding, Mr Commissioner.

Q. Do you see that halfway down page 0231 there is an email from Mr Whitwell to Mr Lindberg, Mr Ingleby, Mr Geary, Ms Scales and yourself?

A. Yes.

Q. It is advising of the sale of one million tonnes of wheat to Iraq?

A. Yes.

Q. Did you see that email?

A. No, I don't recall seeing this email.

Q. Would you have opened it, Mr Stott?

A. Not necessarily, Mr Agius.

Q. It is addressed to you.

A. Well, it is addressed to me and I have got a cc of it as well. I may not have opened this email, I may have just simply deleted it, because my focus was not on international sales and marketing at this point of time.

Q. And can you see that above that email David Johnson has cced to you a response?

A. Yes.

Q. Would that not mean that on that day you received Mr Whitwell's email twice?

A. Probably.

Q. And indeed you received an earlier email from Mr Whitwell on 5 December 2002 at 11.18am, giving you the same information?

A. I see that.

Q. So you deleted all of those emails without reading them?

A. Yes, or my secretary would have done it.

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MR AGIUS: I tender those two pages, Mr Commissioner. We have them re-barcoded at AWB.5020.0234 and 0235.

EXHIBIT #278 TWO PAGES OF EMAILS, BARCODED
AWB.5020.0234-0235

MR AGIUS: Q. Do you remember arranging to meet with Mr Davidson Kelly in early 2003?

A. No, I don't recall that.

Q. Can you remember making inquiries on behalf of Mr Davidson Kelly within AWB in early 2003?

A. No, I don't recall that.

Q. Could we bring up, please, AWB.0129.0233. Do you see that Mr Davidson Kelly, on 3 February 2003, at 20:00 hours, has forwarded to you email correspondence between himself and Mr Whitwell?

A. Could I just go to the bottom of the document, please? Is there anything else on that document?

Q. There are two lines over the page.

A. Could I have a look at that?

Q. If you focus on the entry a third down the first page, 0233, you will see:

Norman Davidson-Kelly...03/02/2003 20:00.

"To: Charles Stott. Subject: Fw: Tigris fyi"?

A. Yes.

Q. I suggest to you that was forwarding to you the two emails that are further down that page?

A. Yes.

Q. Do you see at the top of the page your response on 4 February 2003 at 7.28am?

A. Yes.

Q. :

Will follow up for you.

Best regards,
Charles Stott.

1 A. Yes.

2

3 Q. What did you follow up for Mr Davidson Kelly?

4 A. I don't recall.

5

6 Q. How is it that this email from Mr Davidson Kelly to
7 you was not deleted, whereas every other email that seems
8 to have related to the Tigris matter, once you got back to
9 AWB, from Davidson Kelly or from Whitwell was, apparently
10 on your evidence, deleted by your secretary or not opened
11 by you? How did this get through the net?

12 A. I don't know.

13

14 Q. Is it the case that your evidence about having the
15 other matters deleted by your secretary without reference
16 to you is simply not true?

17 A. No.

18

19 Q. Well, how can you explain, Mr Stott, that this email
20 got through to you and that you read it and that you
21 replied, "Will follow up for you"?

22 A. I don't know.

23

24 Q. Why did you offer to follow up, when you were engaged
25 in matters which had nothing to do with this, as you say,
26 and that your interests were entirely absorbed in other
27 matters for AWB?

28 A. Norman may have - Norman is a person who has many
29 relationships and contacts and a broad network, so there
30 must have been something that was worrying him that he
31 would have asked me to ask about. I just don't recall what
32 it was.

33

34 Q. Well, Mr - sorry, have you finished?

35 A. I have, Mr Agius.

36

37 Q. Mr Whitwell's message to Mr Davidson Kelly was in
38 response to the question "How are things with you":

39

40 The week of 10 February is looking okay for
41 me at the moment, let me know what you
42 think.

43

44 Mr Whitwell's response was:

45

46 Everything great at the moment thanks. Can
47 I come back to you on this. At the moment

1 it doesn't look that good for next week. M
2 is away --

3

4 which we take to be a reference to Michael Long; is that
5 how you take it, Mr Stott?

6 A. I don't know.

7

8 Q.

9 -- and a few issues still to resolve,
10 possibly after the 20th, but will confirm.

11

12 Now, that is forwarded for your information - not seeking
13 your help, not seeking any assistance from you, simply
14 "fyi" - and your response is "will follow up for you." Why
15 the sudden interest, again, in Tigris?

16 A. I don't know. Maybe Norman has rung me around this
17 time and told me of something. I just don't know. I don't
18 recall.

19

20 Q. Might the truth be that all through you were
21 maintaining an interest in Tigris and that you read
22 everything that came your way about this Tigris debt?

23 A. No.

24

25 Q. Why are you so confident about that, Mr Stott, given
26 that we've seen four emails now, three of which you say
27 were either deleted or not read, but somehow this one got
28 through the net? How can you be so confident that you
29 didn't see the others?

30 A. Because the proposition that you are trying to build
31 around my state of knowledge at various times is just
32 wrong. It is --

33

34 Q. All I am doing is drawing your attention to an
35 inference which is available that there are a number of
36 emails sent to you and copied to you about this matter, and
37 that your explanation as to why it is that you did not read
38 or see some of them is inconsistent with the fact that, on
39 this one, not only did you read it, see it, but you took it
40 upon yourself to follow the matter up. I am just drawing
41 to your attention that inconsistency and asking your
42 explanation, if you have one.

43 A. I don't have one, Mr Agius. I think the inference
44 that you are building is wrong.

45

46 MR AGIUS: I tender those two pages, Mr Commissioner.

47

1 EXHIBIT #279 TWO PAGES OF EMAILS,
2 BARCODED AWB. 0129. 0233-0234

3

4 MR AGIUS: Q. Could we bring up, please, exhibit 32,
5 AWB. 0188. 0050. Did you see that document, or a copy of it,
6 in early 2003?

7 A. Could I have a look at the second page, please? No,
8 I don't believe I have seen this document.

9

10 Q. You will see the blank space in the document. When
11 the document was available for you to view, if it was,
12 in February 2003, that space would not have been there; it
13 would have been taken up with typescript which, as we
14 understand it, was a portion of a legal opinion, and there
15 is a third page, 0052. At the time this document would
16 have been available for view, if it was, it would have been
17 signed by both Mr Long and Mr Geary. Having seen that
18 document today, can you say whether or not you saw it?

19 A. Could I just have a look at who the document is
20 addressed to, please?

21

22 Q. It is not addressed to you. It is addressed to
23 Ms Scales and Messrs Johnson, Hogan, Johnstone, Cooper,
24 Lyons, Hockey, Thomas, Geary and Long.

25 A. No, I don't recall seeing this document, Mr Agius.

26

27 Q. The document sets out in detail proposals for
28 repayment of the Tigris debt and proposals as to various
29 methods of paying a US\$2m compensation claim to the Iraqis.
30 Did you see any document on that subject matter in February
31 or early 2003?

32 A. I don't believe I did, Mr Agius.

33

34 Q. Can we bring up, please, AWB. 0129. 0237. If we go to
35 the second page, 0238, starting from the bottom, you will
36 see an email from Mr Davidson Kelly to Mr Whitwell about
37 Tigris.

38 A. Yes.

39

40 Q. And a response from Mr Whitwell to Mr Davidson Kelly.

41 A. Yes.

42

43 Q. And then, if we go to 0237, we see Mr Davidson Kelly's
44 response to Mr Whitwell on 3 February at the bottom of the
45 page; do you see that?

46 A. Yes.

47

1 Q. And then Mr Whitwell has responded to Mr Davidson
2 Kelly a week later, on 10 February:

3
4 Everything moving in right direction. It
5 would be good to see u.
6

7 Et cetera?

8 A. Yes.
9

10 Q. And do you see that that train of emails has been
11 forwarded to you by Mr Davidson Kelly?

12 A. Yes.
13

14 Q. And your response is that you look forward to seeing
15 Mr Davidson Kelly?

16 A. Yes.
17

18 Q. May we take it that you did catch up with him?

19 A. No, I don't think we did.
20

21 MR AGIUS: I tender those two pages.
22

23 EXHIBIT #280 TWO-PAGE CHAIN OF EMAILS FROM
24 MR DAVIDSON KELLY TO MR WHITWELL ABOUT TIGRIS, AND
25 RESPONSES, BARCODED AWB.0129.0237-0238
26

27 MR AGIUS: Q. Did you catch up with him at all, be it on
28 those days or at some other time?

29 A. Mr Davidson Kelly came out to Australia I think in
30 2004, but I think it was around Christmas - oh, I'm not
31 sure of the exact date. I did see Mr Davidson Kelly when
32 he came out to Australia at that time.
33

34 Q. Christmas 2004 or Christmas 2003?

35 A. I thought it was Christmas 2004, or - I can't be
36 certain.
37

38 Q. So that would be nearly two years after these emails -
39 these are February 2003?

40 A. I did see Mr Davidson Kelly - I can't be certain of
41 the timing, but Mr Davidson Kelly came out to Australia and
42 we caught up and had dinner with him in Australia.
43

44 Q. Was that in March of 2003?

45 A. I don't think it was then, no. I think it was much
46 later. I thought it was 2004, or it could have been early
47 2005. I just don't recall.

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Q. Could we bring up, please, AWB.0129.0240. Can we pick it up at 0241. This is Mr Whitwell again picking up the same train of emails, but picking them up on February 26. You will see that in the middle of 0129.0241:

Norman,
looks like I might be away for the week after the 15th to the middle of the following week - ill keep you informed...

Do you see that?

A. Yes.

Q. Then on 7 March, Mr Davidson Kelly:

Any news on likely movements.

Do you see that?

A. Yes.

Q. Mr Whitwell's response at the top of that page?

A. Yes.

Q. And then Mr Davidson Kelly on page 0240 copying you in on the train of emails again on 17 March, indicating:

Just to confirm that I will be arriving in Melbourne early Friday morning 21 March and hope to catch up with you in mid morning. I will give you a ring to arrange the exact time. I will be in Melbourne over the weekend, and available to tie up any loose ends on Monday 24th.

A. Yes.

Q. Do you see that?

A. Yes.

Q. You were copied in on that?

A. Yes.

Q. Did you catch up with Mr Davidson Kelly over that weekend or over those days?

A. No, I don't believe I did.

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MR AGIUS: I tender those three pages, Mr Commissioner.

EXHIBIT #281 THREE PAGES OF EMAILS BETWEEN
MR DAVIDSON KELLY AND MR WHITWELL,
BARCODED AWB. 0129. 0240-0242

MR AGIUS: Q. Mr Stott, did you ever learn of any method by which the AWB agreed to repay the Tigris debt? Did you learn that, for example, in 2003?

A. I was aware that the AWB was working through this issue, and the legal team was working on the matter in conjunction with the marketing team.

Q. Was that in 2003?

A. In 2003 I was aware of the general subject matter, but not of the detail.

Q. Were you aware, then, that AWB was working towards finding a method to recoup the debt from the Iraqis and to repay it to Tigris?

A. Yes. I was aware that the AWB was working to find a solution.

Q. A solution to what?

A. To the obligation or the fulfilment of the debt.

Q. Well, there were two elements, weren't there? There was obtaining the payment from the Iraqis and then passing it on to Tigris. Were you aware that the AWB was working on a solution to each of those issues?

A. Yes.

Q. How was it you were aware of that?

A. I understood that the marketing department was working very closely with the legal team to examine this particular issue. It may have been raised in one of the crisis teams that I had attended - I'm just not certain.

Q. Were you aware of the method that was proposed to secure payment from the Iraqis?

A. I don't think I was aware of the detail of the arrangements. It was being negotiated between the IS&M team and the legal team.

Q. Were you aware that there was a proposal that the contracts which had been agreed to support the sale of a

1 million tonnes of wheat were going to be loaded up - that
2 is, have the price of the wheat declared on the contract
3 inflated to cover an amount due to Tigris?

4 A. I was aware that the amount would be built into the
5 contracts, but that was a general awareness that was being
6 worked through with - the IS&M team and the legal team were
7 working through.

8
9 Q. And how did you become aware of that?

10 A. I'm not sure. It might have been raised at an ELG
11 meeting, I'm just not - I can't be certain as to how my
12 knowledge - how I became aware of that.

13
14 Q. What had you been told about an amount being built
15 into the contracts?

16 A. I'm not sure I was told anything.

17
18 Q. Well, your answer was:

19
20 I was aware that the amount would be built
21 into the contracts, but that was a general
22 awareness that was being worked through
23 with - the IS&M team and the legal team
24 were working through.

25
26 So I'm just asking you, when you say, "I was aware that the
27 amount would be built into the contracts", what were you
28 aware of in that regard?

29 A. Just as I answered the question. You asked me a more
30 specific question that I thought I was unable to answer,
31 how I became aware. I'm not sure how I became aware.

32
33 Q. Well, what had you been told about an amount being
34 built into the contracts?

35 A. I don't think I had been told anything.

36
37 Q. Well, what did you mean by the words an amount being
38 built into the contracts?

39 A. That's what I understood was being contemplated, but
40 it was a difficult issue that was being worked through by
41 the IS&M team in close concert with the legal team.

42
43 Q. How could amounts - any amount - be built into the
44 contract on account of the Tigris debt?

45 A. I'm not sure I understand the question.

46
47 Q. Well, your answer was, "I was aware that the amount

1 would be built into the contracts". How could any amount
2 be built into the contracts on account of the Tigris debt?
3 A. Well, if the legal team and IS&M found an appropriate
4 way to do that, then I assume that that was - the legal
5 team and IS&M were working on the matter.

6
7 Q. Can you think of any appropriate way whereby an amount
8 could be built into the contracts to cover the Tigris debt?

9 A. Mr Agius, I wasn't on top of the detail. I was not
10 involved in the detail of this at the time. My knowledge
11 and awareness may have occurred because I became involved
12 at various times, because of my previous knowledge about
13 the Iraq situation when we have had war issues to deal
14 with - as I said to you the other day, I have lived through
15 four Iraq wars and dealt with many shipments as a result
16 of - or distressed cargoes as a result of that. Therefore,
17 my participation in the crisis team, which I think started
18 in March 2003 for a couple of months - maybe it was in
19 there that I became aware of it. I am just not - I can't
20 be certain.

21
22 Q. My question was can you think of any appropriate way
23 whereby an amount could be built into the contracts to
24 cover the Tigris debt?

25 A. That was not my concern, Mr Agius. Others were
26 dealing with that.

27
28 Q. If you were a member of some crisis team and you were
29 a member of the executive leadership group, and you heard
30 no more than that an amount was being built into the
31 contracts to cover the Tigris debt, then what did you think
32 that meant?

33 A. Exactly what you have just said, that the team was
34 working through this issue; it is an issue that legal were
35 examining in great detail, and I was satisfied that the
36 issue was being addressed by the appropriate ELG members
37 and the legal team. So that's my --

38
39 Q. What did you think it meant when you heard an amount
40 was being built into the contracts?

41 A. An amount was being --

42
43 Q. What did you think that meant?

44 A. An amount was being built into the contracts.

45
46 THE COMMISSIONER: Q. So the price shown in the
47 contracts would not be for the price of wheat but for the

1 price of wheat plus the recovery of a debt?

2 A. The amount built into the contracts includes several
3 components, including inland transport, insurance, ocean
4 freight, transport and, in Australia, loading costs,
5 discharge costs, shrinkage factors, demurrage expenses, and
6 the contracts included all of those costs.

7
8 Q. And the recovery of the Tigris debt?

9 A. I understood that that's what the contract would
10 include.

11
12 Q. On what basis could that be justified?

13 A. I didn't have an opinion on that, Commissioner. That
14 was the legal team, the IS&M team. It was not my direct
15 responsibility, so I didn't offer an opinion on that.

16
17 MR AGIUS: Q. As a member of a group which I think you
18 have referred to as a crisis group, and as a member of the
19 executive leadership group, why would you not have had an
20 opinion on that? You used to run this department. Why
21 would you not have had an opinion on it?

22 A. I used to run that department for a period of 14, 15
23 months.

24
25 Q. Why would you not have almost instinctively have had
26 an opinion on that without even having to think about it,
27 Mr Stott?

28 A. Because I have moved on, Mr Agius. I am focused on a
29 completely different area of the business. Sometimes my
30 comments are welcomed by my ELG colleagues, sometimes they
31 are not welcomed by my ELG colleagues. They are
32 responsible for running their part of the business, and so
33 therefore, if it is being worked through and I am satisfied
34 it is being worked through by the legal team and by my ELG
35 colleagues, then that is suffice [sic] for me. I trust my
36 ELG colleagues, I respect their judgment, I respect their
37 opinion, as they do mine in my part of the business. So
38 you can't - I can't be expected to delve into all the
39 matters of other ELG members. I just can't be. That's
40 what - the group relies on the ELG heads to run their
41 respective businesses.

42
43 Q. That's why I put to you not that you would delve into
44 it, Mr Stott, but wouldn't you have had an instinctive
45 response to this, that it would just not be proper to build
46 into the contract price something to which the contract did
47 not relate; that is, wheat delivered in 1996?

1 A. No, because I'm relying upon the legal team to examine
2 the particular issue to satisfy ourselves that we are
3 operating in accordance with the UN rules and regulations
4 and that we would not be - we would not be in breach of
5 those. So, no, I would not. I have got my legal team. I
6 have - it is a fully resourced team. They had outside help
7 on this particular matter and I was confident that my legal
8 team would do their work.

9

10 Q. What about the advice from DFAT to Mr Harley which
11 made it plain that money could not be recouped from the
12 Iraqis in relation to this quantity of wheat? Now that you
13 were aware that there was a proposal to build into the
14 contract an amount to recoup this debt, weren't you
15 concerned on that basis?

16 A. Mr Agius, I have answered that question before lunch.
17 I have not recalled that letter to Mr Harley and the
18 correspondence around that time when we were addressing
19 this issue in AWB.

20

21 Q. You just didn't remember it, even when you were being
22 told in early 2003 that an amount was being built into the
23 contract price to recoup that amount of money?

24 A. That's right. I did not remember it.

25

26 Q. You were a member of the executive leadership group,
27 though, in early 2003, weren't you?

28 A. Yes.

29

30 Q. And you did attend executive leadership group
31 meetings?

32 A. Not all the meetings, because when I was going through
33 the acquisition of - another acquisition that we were
34 making in 2003, I was excused from many ELG meetings in
35 2003, because my entire focus in 2003 was on a significant
36 acquisition that the company was pursuing. So I found the
37 involvement in the Iraq crisis team, once the war broke out
38 in I think it was March 2003, frankly a distraction from
39 that, but it was an obligation that I needed to participate
40 in that particular meeting, in those particular crisis
41 meetings, because we were looking to divert stranded
42 cargoes that were now no longer able to discharge at
43 Umm Qasr because it was a war zone, and we had to help
44 divert those shipments to other destinations. That is the
45 area of expertise that I contributed to the crisis team.
46 As soon as I was able, I withdrew from the crisis team to
47 return to my duties of focusing on the acquisition that we

1 were pursuing at the time. That was a time that took a
2 considerable amount of time and that was my focus.

3

4 Q. You received agendas for the ELG meetings?

5 A. Yes.

6

7 Q. You received action lists for the ELG meetings?

8 A. Yes.

9

10 Q. You received background briefing papers for the ELG
11 meetings?

12 A. Yes.

13

14 Q. I imagine, given the importance of ELG input at a time
15 after the invasion of Iraq in early 2003, you would have
16 read the material that was provided to you before you
17 attended an ELG meeting, would you not?

18 A. No.

19

20 Q. Would it not have been incumbent upon you to read the
21 material that was going to be raised at an ELG meeting
22 before you attended, Mr Stott?

23 A. No.

24

25 Q. What would be the purpose of having agenda items,
26 action lists, briefing reports if they were not to be read
27 before the meeting?

28 A. Mr Agius, they are available to be read. If I had the
29 time to read them, I would - I may have read them, or if
30 they were of interest to me I may have read them, but those
31 papers are invariably sponsored by an ELG member. You rely
32 on your ELG colleagues to come forward with that paper to
33 brief you on the paper and to advise you as to make the
34 appropriate recommendations on the paper. Just because a
35 paper or a background paper has been put into an ELG set of
36 documents, it does not - it is not fair to assume that that
37 has been read by all the ELG members. Quite the contrary -
38 I don't read them.

39

40 Q. Do your colleagues know that you didn't read papers
41 prior to ELG meetings?

42 A. I would be extremely surprised if my colleagues read
43 the ELG papers prior to - all the ELG papers prior to the
44 ELG meetings.

45

46 Q. How reliable, then, could any decision that was made
47 at an ELG group meeting be if nobody had read all of the

1 papers?

2 A. Because papers have an executive sponsor attached to
3 the paper and we rely on the ELG member as being the
4 sponsor of the paper to bring forward and brief the ELG on
5 that particular issue and make appropriate recommendations.
6 The papers are available to us to read and, in the event
7 that you want to read the paper, they are available to
8 read. Some of those papers I will read, some of them I
9 will not read.

10
11 Q. But you would expect that somebody - a person you
12 describe as the sponsor - would, in relation to any
13 particular paper, outline the paper during the course of
14 the meeting and make recommendations upon the paper?

15 A. If the paper was discussed. It doesn't necessarily
16 mean, because a paper is in the - laid down to be discussed
17 on the agenda items or in the agenda, it doesn't mean that
18 it was discussed. We move around the ELG - the ELG agenda
19 is a planned agenda on what is proposed to be discussed,
20 but quite often the ELG would talk about other issues and
21 we would never get through the ELG papers. I don't think I
22 have been to one ELG meeting where we have got through the
23 ELG papers as per the agenda that we had originally
24 proposed to meet.

25
26 Q. And what would happen to the material that wasn't able
27 to be reached at any particular ELG meeting? Would it be
28 stood over to the next meeting?

29 A. It may be, or it could be stood down or it could be
30 considered that this particular item is not worthy of
31 discussion at the ELG and we wouldn't even discuss it, so -
32 and it wouldn't reappear on the agenda.

33
34 Q. When did you last see minutes, action lists or
35 briefing papers prepared for ELG meetings in early 2003?

36 A. Well, there would have been - 2003 I would have seen
37 them, but I may have seen some of those documents in
38 preparation for the evidence that I give to you and the
39 Commissioner today, but that would have been only since the
40 Commissioner recommended that we all get separate counsel
41 and we have been working through those, but I can't
42 actually - I wouldn't have gone through the ELG agendas
43 back at that time in detail in preparation for this day,
44 Mr Agius.

45
46 Q. Could we bring up, please, ELG.0002.0068. This is an
47 ELG document dating from Tuesday, 6 May 2003, from 8.30 to

1 1pm. Have you seen that document since May of 2003?
2 A. I can't be certain that I have seen that document
3 since then.
4
5 Q. Do you see your name is listed in the second line?
6 A. Yes.
7
8 Q. Does that mean you attended the meeting?
9 A. Not necessarily so.
10
11 Q. Do you see that your name is not listed as an apology
12 or a proxy?
13 A. Yes.
14
15 Q. Does that mean you attended the meeting?
16 A. Not necessarily.
17
18 Q. Do you see that there is no indication on that
19 page that you did not attend the meeting?
20 A. No, and there is no indication that I did, either.
21
22 Q. Is it not likely that you attended that meeting,
23 Mr Stott?
24 A. It depends, Mr Agius, what I had on at this time.
25
26 Q. That's why I am asking you the question: is it not
27 likely that you attended that meeting?
28 A. It is possible; it is not - I can't confirm
29 categorically that I sat through the entire ELG meeting.
30 Some ELG meetings around this time in 2003, because we were
31 pursuing the acquisition of our - we were - actually at
32 this point we had changed from pursuing our acquisition of
33 our competitor to the acquisition of a company that we
34 actually ultimately acquired, so it was a very busy time.
35 I did come in and out of various ELG meetings and I was
36 excused from a number of them, and I don't believe that the
37 agenda, the proposed agenda, would be an accurate record of
38 those that attended the meeting.
39
40 Q. Could we bring up, please, the next page, 0069. This
41 is a document which is headed "Executive Leadership Group
42 Action List. In attendance:", and your name is in the
43 second line under the heading "Attendance". Does that mean
44 you attended?
45 A. No. No, it doesn't. The action list - I think that
46 the action list probably has that. The action list was
47 prepared by someone. We never confirmed the action list as

1 an accurate record of the meetings.

2

3 Q. If we come down that page under the heading "Company
4 Matters", about halfway down, you will see the word "Iraq"?

5 A. Yes.

6

7 Q. And if we work across from the word "Iraq" --

8 A. Yes.

9

10 Q. -- to the column "ELG member" --

11 A. Yes.

12

13 Q. -- your initials appear, do they not?

14 A. Yes.

15

16 Q. Along with Mr Lindberg, Mr Ingleby, and "SS",
17 Sarah Scales; is that right?

18 A. Yes.

19

20 Q. Mr Lindberg was the chief executive officer?

21 A. Yes.

22

23 Q. Mr Ingleby was the chief financial officer?

24 A. Yes.

25

26 Q. And you were, in relation to Iraq?

27 A. I was a member of the crisis team, and I actually -
28 I was the person who formally constituted the crisis team.

29

30 Q. For Iraq?

31 A. For Iraq. I had to set up, in conjunction with the
32 chief risk officer - go through back in 2002 how we were
33 going, in the event of war, to manage the Iraq crisis. It
34 was inevitable, war. The global community had been
35 positioned for war over an extensive period and in
36 conjunction with David Johnstone, who was our chief risk
37 officer, we sat down and thought through all the issues
38 around an Iraq crisis team - the logistics of the meeting,
39 who would chair the meeting, the media, who needed to be
40 represented there, how often it would meet. We had issues
41 around providing catering for people because we would be
42 working through the night, and even to the extent I think
43 we went into sleeping arrangements within the building in
44 the event that we had to have people working through the
45 night. So I was a member of that team. I set up the - at
46 Andrew's request, I set up the Iraq crisis team. I got
47 David Johnson involved in doing that. So I would imagine

1 that this just refers to Iraq as an ongoing issue at this
2 time.

3

4 Q. And as a person who was so involved, surely you would
5 have read material that related to the very matters
6 concerning crisis in Iraq?

7 A. Only when I was a member of the team, Mr Agius.

8

9 Q. But these documents seem to indicate that you were a
10 member of the team, Mr Stott?

11 A. Yes, when, in March 2003, war broke out, I was a
12 member of the team. We had regular --

13

14 Q. So, given what you have just described to us in what
15 I might say is exquisite detail of your involvement in the
16 crisis concerning Iraq, is it not more likely than not that
17 you would have read documents which related to Iraq in May
18 of 2003 following the invasion?

19 A. No, Mr Agius, because the team has been set up. My
20 role on the team was to help formally constitute the team
21 and then ask - or offer any advice to the team on any
22 issues that were occurring. I did not - I was not the team
23 secretary, I was not responsible for the agenda items and
24 I was not interested - and we were not going into the
25 detail. We had subject matter experts presenting at that
26 team meeting. So --

27

28 Q. You were the team leader, weren't you?

29 A. No, no, no, I - no, no, no. Andrew Lindberg was the
30 team leader. I was the person who led the building and our
31 response to really the charter around how the team would
32 operate and where it would operate, how often it would
33 meet, where it would meet, what were the physical logistics
34 of it, do we need some CNN advice, do we need some expert
35 advice on how we respond to the crisis?

36

37 Q. How would you know what advice you needed if you
38 didn't read briefing papers that had been prepared for the
39 team?

40 A. Because I have dealt with the war situations before,
41 back in August 1990, when Iraq invaded Kuwait. I was
42 heavily involved in dealing with the issues pertaining to
43 the ships that we had on the water at that time. The other
44 invasions, when Iraq was removed from Kuwait, I was
45 involved with that particular war. The other war - I can't
46 remember which one it was, it was a desert invasion - I
47 have been involved with it, so I don't need to read the

1 documents. The team is reading the documents, the team is
2 involved in it, they are the subject matter experts. I am
3 just sitting listening and offering advice based on prior
4 experiences in similar difficult market situations.

5
6 Q. Did you read the ELG report that had been provided for
7 this meeting in relation to Iraq?

8 A. No, I don't think an ELG report was provided for these
9 meetings. I don't believe --

10
11 Q. Can we bring up, please, ELG.0002.0087.

12
13 THE COMMISSIONER: Are you tendering the last document?

14
15 MR AGIUS: It is already an exhibit, Mr Commissioner. It
16 is confidential exhibit 64.

17
18 THE COMMISSIONER: Quite right. Yes.

19
20 MR AGIUS: Q. This document is entitled "ELG Report
21 6 May 2003 Iraq"?

22 A. Yes.

23
24 Q. Did you read that, Mr Stott?
25 A. I don't know that I - I don't recall reading that
26 document. Was this delivered to the ELG or was it a verbal
27 update to the ELG?

28
29 Q. I am asking you did you read the document?

30 A. I don't recall reading the document.

31
32 Q. Do you want to look at it to see what its content is,
33 to see if your recollection is refreshed?

34 A. I am more than happy to do that. I have finished
35 reading - sorry, could we go to the bottom, please?

36
37 Q. In particular, I draw your attention to "Operation
38 Proton/Hunta", and the heading "Tigris Commission"?

39 A. Where is that?

40
41 Q. On the second page?

42 A. Sorry, I am still on the first page. I don't recall
43 seeing this document.

44
45 Q. What was Operation Hunta?

46 A. Operation - it is Hunta.

47

1 Q. Hunta, H-U-N-T-A, what was that?
2 A. "Hunta" I think is the Iraqi word for wheat. I don't
3 know.
4
5 Q. Yes. What was the - what was Operation Proton/Hunta?
6 A. I think Proton was - Michael was involved in it with
7 Iraq. I think he worked for - I don't know who he worked
8 for, whether it was Austrade - not Austrade, AusAID in
9 Iraq. I'm not sure what his arrangements were. That was
10 what Proton was, but Hunta I don't know.
11
12 Q. You don't know?
13 A. No, I don't know Hunta. "Hunta" is wheat.
14
15 Q. We have a document from the AWB which suggests that
16 you were the sponsor of Project Hunta. What would you say
17 about that?
18 A. I would like to see that document, which would help me
19 refresh my memory, but I don't - there was a proposal,
20 Mr Agius, at this time, sponsored by the marketing
21 department and their business development people, that they
22 actually wanted to take over the trucking in - the inland
23 transport in Iraq. They thought it was a great business
24 development opportunity for AWB to start buying trucks and
25 transporting the grain ourselves within Iraq, in
26 competition to Alia. That may have been Project Hunta.
27 I was an ardent critic of that particular project and the
28 team made many delegations down to my office at around this
29 time, because of my business development responsibilities,
30 given I was responsible for looking after global - our
31 business development activities and the growth agenda.
32 That may have been Project Hunta. But Project
33 Hunta - I thought that they had been in the desert too
34 long, frankly, recommending that we start buying our own
35 trucks and running a transport company in Iraq, in a war
36 zone, in competition to Alia.
37
38 Q. So was that Project Hunta or not?
39 A. I don't know if that was Project Hunta. I don't know
40 if that's Project Hunta. But if I am a sponsor of a
41 particular project, that was the only project that I can
42 recall at that time that was being suggested. I don't know
43 if that's Project Hunta. You said you had a document
44 there. I'm trying to assist you in remembering what
45 I might have been involved with, but if you shared that
46 document with me, maybe I could - I will know exactly what
47 Project Hunta was.

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Q. Well, I would like your evidence as to what Project Hunta was before you see the documents that indicates what it was, Mr Stott. What was Project Hunta - not what it may have been, what was it?

A. I don't know. I don't recall. I think that's what it was as an answer to your question, but I don't - I can't be certain. You have that document in your hands in front of you and I don't know.

Q. Might you not then have read documents that related to Project Hunta, if you --

A. No.

Q. -- were the sponsor of the project?

A. No, I did not.

Q. Why not, Mr Stott?

A. Because I thought it was such a ludicrous project from the start to the end that I didn't want to waste my time reading it. There is no way that, as an ELG member, I would have promoted or sponsored or had my name on the idea of buying trucks and transporting grain throughout a war zone, with mines and everything else, in Iraq. I just thought it was bizarre. So I didn't --

Q. And so you wouldn't read anything to do with it?

A. No, I didn't.

Q. Can we bring up, please, AWB.0236.0053. What is that document, Mr Stott?

A. It looks like a team structure on that particular project, but --

Q. It is a project plan for Project Hunta, indicating, under "Initial Team structure", that you were the sponsor; is that right?

A. That's what it looks like, yes.

Q. Have you seen this before?

A. I can't recall.

THE COMMISSIONER: Q. It seems to involve Mr Long and Mr Flugge?

A. Well, they - yes, the way that line is drawn is that they are separately working on Proton.

1 MR AGIUS: Q. Well, does that document assist your
2 recollection of anything to do with Project Hunta?

3 A. I think that it is consistent with what I believe I
4 have said to you about that particular project, Mr Agius.
5 I think I am quite - still very - still comfortable with
6 what I have said to you about this particular project.
7

8 Q. What was Operation Proton?

9 A. That was in reference to Michael Long's and Trevor
10 Flugge's involvement with either AusAID or the - I don't
11 know under what - on what basis they went into Iraq, but
12 I thought it was through AusAID, working with the United
13 Nations, and that project was called Proton.
14

15 Q. What were the objectives of that project?

16 A. I don't know. I mean, I assume that they were
17 objectives set by AusAID and the United Nations. I have
18 got --
19

20 Q. No, what were the AWB objectives in relation to AWB's
21 operation entitled "Proton"?

22 A. I'm not sure that the AWB had any objectives, other
23 than to be seen to be assisting in providing expertise in
24 Iraq when required.
25

26 MR AGIUS: I tender the document entitled "Hunta Project
27 Plan".
28

29 EXHIBIT #282 DOCUMENT ENTITLED "HUNTA PROJECT PLAN",
30 BARCODED AWB. 0236. 0053
31

32 MR AGIUS: Q. Have you looked at the document entitled
33 "ELG Report 6 May 2003, Iraq" by Darryl Hockey and Chris
34 Whittwell? Could we bring up, please, ELG. 0002. 0087 and
35 0088. I believe you have read that just recently. Have
36 you seen that, Mr Stott?

37 A. That's the document you just gave me, yes. We had a
38 look at it.
39

40 Q. Do you say you read that in May of 2003, or not?

41 A. I don't recall reading it in May 2003.
42

43 Q. It records, under "Tigris Commission":
44

45 Tigris Petroleum (BHP) has asked for an
46 update of status of their agreement in
47 light [of] current contract execution and

1 when they will begin receiving payments.
2 They intimidated a number of influential
3 people will need to start receiving funds
4 and that further delays may cause
5 difficulties going forward.
6

7 Did you have any conversations concerning that matter with
8 anybody at AWB --

9 A. No.

10
11 Q. -- in early 2003?

12 A. No, I don't recall.

13
14 Q. In the first half of 2003?

15 A. No, I don't recall that.

16
17 Q. Did you have any conversations with Mr Davidson Kelly
18 about that subject matter?

19 A. I don't recall that.

20
21 Q. Did you have any conversations with Mr Davidson Kelly
22 on the topic of any anxiety that he or Tigris Petroleum had
23 about when it was that Tigris Petroleum would begin to
24 receive payments?

25 A. No, I don't recall that.

26
27 MR AGIUS: I tender the two-page ELG report. I am told it
28 is part of confidential exhibit 64C. I won't tender it
29 additionally.

30
31 THE COMMISSIONER: Yes. The portions that have been read
32 on to the public transcript are not confidential.

33
34 MR AGIUS: Q. Mr Stott, would you look at the next
35 document, please, AWB.0129.0283. Mr Whitwell has, on
36 7 May, copied you in on a document, being an email from
37 Mr Davidson Kelly to himself, attaching an agreement for
38 consideration. Did you read that email, Mr Stott?

39 A. I may have. I don't recall reading it.

40
41 Q. Is it one that your secretary would have deleted as a
42 matter of course?

43 A. If it is cced to me, I don't read --

44
45 MR LACAVA: Commissioner, I am sorry, I don't mean to
46 interrupt. We have sat here for a number of days now and
47 there has been a lot of laughter from the back of the room.

1 I haven't turned around to see who it is from, but I would
2 ask you to ask those who are laughing to desist from
3 laughing. This is not a matter for laughing.

4
5 THE COMMISSIONER: Yes. I have heard your remarks,
6 Mr Lacava. You go on, Mr Agius.

7
8 MR AGIUS: Q. I asked whether it was one that your
9 secretary would have deleted as a matter of course, and
10 I think you were interrupted in your answer. You said, "If
11 it is cced to me, I don't read" and then we didn't get the
12 rest of your answer, Mr Stott.

13 A. No, I don't know if my - I don't recall seeing this
14 document.

15
16 Q. I am asking you, was it deleted by your secretary?

17 A. I don't know.

18
19 Q. Might it have come through to you and you might have
20 read it?

21 A. Possibly. I don't recall.

22
23 Q. Mr Stott, did you ever tell any persons within AWB
24 that, look, they might as well not cc documents to you by
25 email because it was a complete waste of time, you would
26 never read them or they would be deleted?

27 A. Mr Agius, I receive many, many documents. I receive a
28 lot of correspondence and I rely as a manager on people to
29 screen the material that comes through to me, and I don't
30 read it. I am not a lawyer who tends to read everything
31 that is being given to him in great detail. That is not
32 what I do. That is not how we operate in a senior
33 management position. Otherwise, Mr Agius, I would never
34 get away from my email machine. I would be stuck there all
35 day long. Now I operate on a Blackberry. Most of my
36 emails on a Blackberry I don't bother opening up my
37 attachments, so actually, when the Blackberry comes
38 through, the email comes through, I very rarely open the
39 attachments because they are not able to be opened and
40 adequately read on the document and therefore I only - I
41 will delete very rapidly from my Blackberry. So --

42
43 Q. But you've told - I am sorry, go on.

44 A. So I just - it is not - you are painting this as a
45 very, very unusual work practice. It is not an unusual
46 work practice in the world of commerce. In the world of
47 commerce, you don't read every document that's being put to

1 you. You - if something is urgent, generally people will
2 walk a document around to you and work you through that
3 document in real time. A document cced I would very rarely
4 read.

5
6 Q. That's why I asked you, did you tell persons within
7 AWB that they may as well not cc you documents because you
8 would not read them?

9 A. No.

10
11 Q. So for all the years that you were at AWB people were
12 deliberately copying you in on documents without knowing
13 that you were not reading them?

14 A. That's right.

15
16 Q. What about when people sent you emails directly - did
17 you tell them that you had given your secretary
18 instructions and that those emails ran the risk of being
19 deleted without you seeing them at all?

20 A. It depends what my priority was. They would not know,
21 whether or not it was addressed to me personally, that
22 I would have read it or not.

23
24 Q. Did you bother to tell anybody at AWB, "Look, you
25 know, if you are sending me an email sent directly to me,
26 don't assume that I have read it, because often these get
27 deleted without me even looking at them?" Did you say
28 anything like that?

29 A. I think a lot of people would realise in AWB that
30 that's my work ethic.

31
32 Q. But they kept sending you emails?

33 A. Yes.

34
35 Q. And you kept deleting them?

36 A. Well, me or my secretary would have deleted them.

37
38 Q. How can a business operate like that, Mr Stott, when
39 someone in your position has a policy of deleting emails or
40 not reading emails and also of not telling persons within
41 AWB not to bother sending them to you because you won't
42 read them or they may be deleted?

43 A. I think that would be - I would be surprised if that
44 wasn't standard practice in most of the commercial
45 organisations around, Mr Agius.

46
47 Q. People think something is important enough to either

1 send it to you directly or to copy you in on it, and you
2 never disabuse them of their mistaken belief that you are
3 actually going to respect the fact that they have sent it
4 to you and read what they have said?
5 A. That's right.
6
7 Q. And that's your current practice too, is it?
8 A. Yes.
9
10 Q. So when you delete matters from your Blackberry, do
11 you send an email to someone telling them that you haven't
12 read what's been sent to you?
13 A. No.
14
15 Q. Have you told anybody in your current position who
16 reports to you that you don't read attachments to emails?
17 A. I think most of my current reports would know that
18 that's the way I operate.
19
20 Q. But they keep sending you attachments?
21 A. Yes, because they are usually sending it to other
22 people as well.
23
24 Q. Why bother sending it to you, then, Mr Stott, if they
25 know and believe that you are not going to read it?
26 A. You would have to ask them that.
27
28 Q. Perhaps you should ask them, if they are reporting to
29 you - have you asked them?
30 A. No.
31
32 Q. Is this just a nonsense, Mr Stott? Is it the truth
33 that you do not read emails that are copied to you or that
34 are sent to you directly?
35 A. Mr Agius, it is not a nonsense, it is the way the
36 world operates in commerce. It may not be - from a legal
37 perspective, you might find that odd, because the lawyers
38 are prolific readers of everything that comes to them.
39 I don't have time to do that, otherwise I would just not do
40 my job.
41
42 Q. So, in relation to this email, Mr Stott, what can you
43 tell us? Did you read it? Did you not read it? Was it
44 deleted, or did you determine, having read it, that it was
45 not a matter that you were interested in?
46 A. I can't recall, Mr Agius.
47

1 MR AGIUS: I tender the email, AWB.0129.0283.

2
3 THE COMMISSIONER: Is that exhibit 34?

4
5 MR AGIUS: I am ably instructed that it is not,
6 Mr Commissioner.

7
8 THE COMMISSIONER: The bottom part of it?

9
10 MR AGIUS: That is a similar document, and it is a
11 document we are coming to shortly.

12
13 THE COMMISSIONER: Quite.

14
15 EXHIBIT #283 EMAIL BARCODED AWB.0129.0283

16
17 MR AGIUS: Q. Could we come to exhibit 34, which is
18 AWB.0129.0298. Here we have Mr Whitwell, on 28 May now,
19 some time later, again copying you in on Mr Davidson
20 Kelly's earlier email, this time attaching his comments
21 concerning the draft agreement. I wonder if you could read
22 that email at the top of the page, which has been copied to
23 you.

24 A. Can we go to the bottom of the page, Mr Agius?

25
26 Q. It is the same one that you have just seen, but by all
27 means, yes. That's Mr Davidson Kelly's email of 7 May
28 2003 --

29 A. Yes.

30
31 Q. -- at 2.43am, which Mr Whitwell had copied you in on
32 7 May.

33 A. Can we go back to the top, please, Mr Agius?

34
35 Q. Now Mr Whitwell is copying you in on it a second time,
36 this time attaching his comments in relation to the draft
37 agreement.

38 A. I don't recall receiving this - reading this document.

39
40 THE COMMISSIONER: Q. Were you at an ELG meeting when it
41 was agreed to pay Tigris a commission - US\$500,000?

42 A. I don't recall it being discussed at an ELG meeting,
43 Commissioner.

44
45 MR AGIUS: Exhibit 34 is before us.

46
47 Q. Were you at any meeting where there was an agreement

1 to pay Tigris a commission?

2 A. I don't believe I was.

3

4 Q. Were you at any meeting where the topic of paying
5 Tigris a commission was discussed?

6 A. I don't believe that I was, no.

7

8 Q. Did anybody at AWB ever discuss with you a proposal to
9 pay Tigris a commission?

10 A. No, I don't believe so, but there was a document -
11 there was a document that I was asked to look at, but
12 I thought it was in 2004 or early 2005, that related to
13 this subject. It wasn't emailed to me, it was handed to
14 me. Someone wanted some quick comments on it and I think
15 I may have provided some comments. But that was in the
16 context that this subject matter was being worked through
17 with the legal team, and the legal team had external
18 lawyers working on the matter as well, and they were
19 dealing with it.

20

21 THE COMMISSIONER: Q. Are you speaking of the agreement
22 between AWB and Tigris?

23 A. I don't - there was an agreement that I sighted, that
24 I was asked to comment on, at that - around - but it wasn't
25 in 2003. I thought that was much later, in 2004 or even
26 possibly 2005, that I was asked to comment on it.

27

28 MR AGIUS: Q. In that regard, then, can we bring up
29 AWB.0129.0243. Could we go to the next page, 0244. Do you
30 recognise the handwriting on that page?

31 A. No.

32

33 Q. Is this the agreement that you were asked to look at,
34 or a copy of it, with or without the handwriting?

35 A. It appears similar to it, but not - I'm not certain
36 that - there seems to be some - I can't be certain if this
37 is the one that I was asked to provide a comment on, but it
38 looks relatively similar. But this wasn't in May 2003 that
39 I was asked for a copy - asked to consider this. This was
40 much later than that.

41

42 Q. I am not suggesting that you were asked to look at it
43 in May 2003. That's the date on the document. I was
44 asking whether this was the document, or a copy of it --

45 A. It looks familiar, Mr Agius, to a document that I saw,
46 but it doesn't - I'm not sure that - the document that
47 I saw doesn't have that there.

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MR AGIUS: I will tender AWB.0129.0243 through to 0248.

EXHIBIT #284 DOCUMENT BARCODED AWB.0129.0243-0248

MR AGIUS: Could we bring up, please, exhibit 38, AWB.0193.0265.

Q. Could we go to the second page, 0266. Just read through it, Mr Stott, and when you get to the end of a page, if you indicate to the monitor, it can be changed.

A. Can we go down to the bottom, please. Next page. Is this this exhibit?

Q. Yes, I will give you a hard copy. It might be easier to read.

A. Thank you. I have read that.

Q. Is that the document, or a copy of the document, that you were given?

A. I don't think so, Mr Agius.

Q. In what way did the document that you were given differ from this one?

A. Well, I thought the document that I was given to look at was a draft document, asked to make comment on it, and it was dated May 2003. But I don't think it was in May 2003 that I made the comments. I thought it was - as I said to you earlier, I thought it was later than that. I have not - I don't believe I have seen this document.

Q. Could we go back to exhibit 284, please - AWB.0129.0243. If we go to page 0244, did the document that you saw refer to the payment that was to be made to Tigris as compensation? We need to go to page 0245. You will see "Commencement & Duration":

This Agreement shall be deemed to have come into force on the Effective Date, and shall continue in force until Tigris's entitlement to compensation, calculated in accordance with Clause 3 hereof, has been satisfied...

Then clause 3 "Tigris's Compensation":

Subject to the terms and conditions of this

1 Agreement, AWB shall pay to Tigris an
2 amount equal to US\$ 7,875,000... ("the
3 Compensation").
4

5 Did it contain clauses such as that?

6 A. I don't recall it containing that.
7

8 Q. How did it refer to the amount of money that was to be
9 paid to Tigris? Did it refer to it as a commission or as
10 compensation?

11 A. I don't know, Mr Agius. I just don't recall how - in
12 the document that I saw, how it was referred to.
13 I don't --

14
15 Q. Was the document that you saw entitled a service
16 agreement?

17 A. I can't be certain.
18

19 Q. Who provided it to you?

20 A. I think one of the IS&M team.
21

22 Q. Mr Whitwell?

23 A. I can't be certain if it was Mr Whitwell. It may have
24 been, but I can't be certain.
25

26 Q. We've seen emails where an agreement is spoken of as
27 having been attached for consideration. Do you think, upon
28 reflection, that you might have received it as an
29 attachment to an email and considered it in that context?

30 A. No, I don't think I did. I think that this document
31 was given to me as a hard-copy document. I didn't
32 receive - I don't recall receiving it by email. I thought
33 that it was given to me as a hard-copy document for - and
34 in the context of that it was being worked through the
35 legal department and I was asked for comment.
36

37 Q. And did you make comment in writing on the document?

38 A. I think I did, yes.
39

40 Q. Do you remember the nature of any comments you made?

41 A. I think the - there was - it was vague to me in the
42 document as to what this was in relation to. So I may have
43 made some comment to try to tighten up that particular
44 aspect of it, but --
45

46 Q. Have you seen a copy of that document which bears your
47 comments since the time it was given to you, over the last

1 two or three years?

2 A. Yes.

3

4 Q. When did you last see a copy of the document with your
5 comments on it?

6 A. During the course of this Commission someone has asked
7 me to confirm if that was my handwriting on a document and
8 it was maybe a week ago that I was asked about it.

9

10 Q. Whilst you were in the witness box?

11 A. No.

12

13 Q. Outside of the Commission?

14 A. Outside of the Commission.

15

16 Q. Outside of this inquiry?

17 A. Yes.

18

19 Q. Do you retain a copy of such a document with your
20 handwriting on it?

21 A. I don't.

22

23 THE COMMISSIONER: Mr Lacava, do you have such a document?

24

25 MR LACAVA: Commissioner, I believe that I do, but not
26 here.

27

28 MR AGIUS: It would be caught by the notice that has been
29 served on Mr Stott, I believe.

30

31 MR LACAVA: When I say I have got a document, I have got
32 one page of a document that purports to be the front
33 page of an agreement, or one of the early pages in an
34 agreement.

35

36 THE COMMISSIONER: Does it have writing on it by this
37 witness?

38

39 MR LACAVA: I believe so.

40

41 THE COMMISSIONER: Would you mind producing it to us?

42

43 MR LACAVA: If I can find it, I will produce it. Can I
44 have a few minutes? I have so many documents here.

45

46 MR AGIUS: Q. What did you do with it after it was given
47 to you for your comment and you had written on it,

1 Mr Stott?

2 A. I sent it back up to the marketing team.

3

4 Q. So did you become aware as to how it was proposed that
5 Tigris would be paid by AWB?

6 A. Only insofar as that document that I was asked to
7 review, which was being, I understood, prepared by the
8 legal team at the time, asked me to provide comment on it,
9 and that was what I did on that particular document.

10

11 MR LACAVA: I produce the copy document that I have from
12 my brief.

13

14 THE COMMISSIONER: Thank you.

15

16 MR AGIUS: Could I pass this to the Commissioner for a
17 moment.

18

19 THE COMMISSIONER: Show it to Mr Stott, would you?

20

21 Q. Is that the document, or the first page of the
22 document to which you are referring?

23 A. Yes.

24

25 Q. That's your handwriting at the foot?

26 A. Yes.

27

28 Q. And the document that you were noting, or making notes
29 on, was more than one page, I take it?

30 A. Yes.

31

32 THE COMMISSIONER: Thank you.

33

34 MR AGIUS: I will tender that one page, and we will have
35 copies made of it, Mr Commissioner.

36

37 EXHIBIT #285 ONE-PAGE DOCUMENT PRODUCED BY MR LACAVA UPON
38 REQUEST

39

40 THE COMMISSIONER: Can you make arrangements to produce
41 the balance of it, Mr Lacava?

42

43 MR LACAVA: That's all I hold, Commissioner.

44

45 THE COMMISSIONER: The witness said he was given more, so
46 there must be more somewhere.

47

1 MR LACAVA: Me may have been shown more. That is all
2 I hold.

3
4 THE COMMISSIONER: Q. What happened to the rest of it,
5 Mr Stott?

6 A. I handed back the document to the IS&M team. I don't
7 know what's happened to the rest of the document,
8 Commissioner.

9
10 THE COMMISSIONER: It looks like it is up to you, Mr Judd.

11
12 MR JUDD: Already in train, Commissioner, but we do need a
13 copy of the document.

14
15 THE COMMISSIONER: Yes, thank you.

16
17 MR AGIUS: Q. Did you make a copy of the document
18 yourself, before you handed it back to the IS&M person?

19 A. No.

20
21 Q. Do you know the circumstances in which you have come
22 to be in possession of that page, the one that Mr Lacava
23 produced? Do you know the circumstances in which you have
24 come to be in possession of it?

25 A. Yes.

26
27 Q. What were they?

28 A. It was Friday, I was due to appear here - I need a
29 diary, but Friday - two Fridays ago I was due to appear
30 here and I - you didn't require me on that day so I went
31 back down to Melbourne on the Thursday evening, and I went
32 into the office and one of the legal team produced this
33 document and asked me to confirm that it was my
34 handwriting. I asked - actually, it was on my desk - asked
35 to confirm whether it was my handwriting. I went round to
36 photocopy this page, which was the only page I had, and
37 I was then approached by one of the legal team, purporting
38 to be acting for the company solicitors, wanting
39 confirmation that this was my handwriting.

40
41 Q. On that occasion did you see the whole document or
42 just one page?

43 A. Just this page, Mr Agius.

44
45 Q. And you kept a copy of whatever it was --

46 A. Just --

47

1 Q. -- that is the page that you saw on that date?

2 A. That's the page that I saw on that date. Sorry,
3 that's a copy of the page that I saw on that date.

4

5 MR AGIUS: I wonder if we might have some copies made of
6 that now.

7

8 THE COMMISSIONER: Yes.

9

10 MR AGIUS: Q. Aside from what you learnt of the proposed
11 agreement between AWB and Tigris, did you come to learn of
12 the form of the final agreement?

13 A. No, I don't think I ever became aware of the final
14 agreement, Mr Agius.

15

16 Q. So far as you were concerned, from the time that you
17 became involved in this, to the extent to which you concede
18 you did become involved in it, after your return to AWB, it
19 was always your view, wasn't it, that AWB was assisting
20 Tigris or BHP to recover a debt from the Iraqis?

21 A. When I came back to the AWB, yes.

22

23 Q. And that the \$8m-odd that was due was due to BHP or
24 Tigris to acquit that debt?

25 A. Yes.

26

27 Q. It was never your view, was it, that Tigris was
28 performing a service for AWB and that for that service it
29 was being paid something in the order of \$8m?

30 A. I'm aware that that was discussed and was being worked
31 through with the legal team around that time, that they
32 were looking at various ways to ensure that this was an
33 appropriate structure of the transaction.

34

35 Q. But it was never your view that the payment of this
36 money to Tigris was a payment for a service that Tigris had
37 rendered to the AWB, was it?

38 A. I was unclear, Mr Agius, as to what the ultimate
39 arrangement was.

40

41 Q. I am not speaking about the ultimate arrangement; I'm
42 speaking about your state of knowledge during the period
43 that you were back at AWB up until, say, early 2003.

44 A. Up until early 2003, that's correct.

45

46 Q. Are you aware of any facts or circumstances which may
47 have converted the payment of this money from a notional

1 repayment of a debt by the Iraqis to the payment of a
2 service to Tigris by AWB for a service performed by Tigris
3 for AWB?

4 A. I can't be certain.

5

6 Q. Are you aware of any facts or circumstances which may
7 have converted the payment of the money from a notion of
8 repayment of a debt by the Iraqis to the payment for a
9 service to Tigris?

10 A. So far as I have seen that agreement that we have just
11 provided you, that's when I became aware that there was an
12 issue, an agreement being proposed that was being worked
13 through by the legal team in conjunction with IS&M.

14

15 THE COMMISSIONER: Q. Yes, but your understanding was
16 that this was in truth a repayment of a debt plus interest?

17 A. That was my understanding.

18

19 MR AGIUS: Q. Now, did you learn that, over time, the
20 debt was recouped from the Iraqis by inflating the stated
21 price for the sale of wheat to incorporate an amount to
22 cover the Tigris debt, and that, on that basis, the AWB
23 recouped the debt from the Iraqis?

24 A. Yes.

25

26 Q. And did you learn that, over a period of time, that
27 money amassed in the accounts at AWB?

28 A. Yes.

29

30 Q. And did you learn what happened to it? Was it
31 eventually paid out?

32 A. I have learnt that it was paid out, yes.

33

34 Q. Who was it paid out to so far as the information that
35 you have is concerned? What did you learn?

36 A. That it was paid to Tigris.

37

38 Q. And what was your source of information?

39 A. I think that was following the board meeting in 2004
40 I became aware of that.

41

42 Q. That the money was paid to Tigris following that board
43 meeting?

44 A. I became aware that the money had been paid to Tigris
45 following that board meeting, yes.

46

47 Q. Were you aware that the money had been paid to Tigris

1 before the board meeting?
2 A. No, I was not aware of that.
3
4 Q. Were you aware that the agreement to pay Tigris had
5 been entered before the board meeting?
6 A. No.
7
8 Q. How was it that you became aware following the board
9 meeting that the money had been paid to Tigris?
10 A. I think I was told by the - I think I was told.
11
12 Q. By someone within AWB or by Mr Davidson Kelly?
13 A. No, by someone in AWB.
14
15 Q. We know that AWB received a fee for recouping that
16 debt for Tigris, a fee of US\$500,000 which was paid to
17 AWBI; were you aware of that?
18 A. I was aware of that after the - in late 2004 or early
19 2005.
20
21 Q. In what circumstances did you become aware of that?
22 A. I was informed that that was the - I don't know of the
23 circumstances; I just became aware of it, probably
24 following the board meeting.
25
26 Q. Do you know whether any employee of AWB ever received
27 any amount of money from Tigris?
28 A. No.
29
30 Q. You don't know?
31 A. No, I don't know.
32
33 Q. Do you know whether Tigris paid anybody any money for
34 assisting in the recouping of that debt from the Iraqis?
35 A. In AWB?
36
37 Q. In AWB or anybody else?
38 A. No.
39
40 Q. What about outside of AWB?
41 A. No.
42
43 Q. When you say "no", does that mean that, as far as you
44 know, no money was paid by Tigris to anybody within AWB or
45 outside of AWB for recouping of the debt?
46 A. No, I'm not aware of any money being paid by Tigris to
47 anyone.

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Q. Did Mr Davidson Kelly ever discuss with you the recoupment of this debt after May of 2003?

A. I don't recall, but we - I mentioned a dinner that we had. I met Mr Davidson Kelly I thought in either late 2004 or early 2005, I can't be certain as to when that was, and I had dinner with Mr Davidson Kelly in Melbourne.

Q. Did he discuss this matter with you? Did you discuss it with him?

A. We didn't discuss the matter, no. I think the dinner - didn't discuss the matter over dinner.

Q. Was there any talk about this matter?

A. No.

Q. Mr Davidson Kelly's company had just recouped over \$8m, or approximately \$8m, from the AWB. Was there no conversation about it at all?

A. No, not at that point, it was basically - the event had passed and we went out to dinner.

Q. With no talk about the event at all?

A. No, I don't recall there was any discussion about the event.

Q. Well, that was the first conversation that you had had with Mr Davidson Kelly, then, since, what, September 2000?

A. No, I had had conversations with Mr Davidson Kelly, that we've talked about over the last three days. I had had conversations with Mr Davidson Kelly. Mr Davidson Kelly and I talked about the war and various other things that we had - I have already shared with you.

Q. What, since 28 September 2000 you and Mr Davidson Kelly had conversations?

A. Yes.

Q. About the recoupment of the Tigris debt?

A. Since - well, he has asked at various times on the progress of how that was going when I was the head of international sales and marketing, and I have asked my people who were responsible for that market and following it up on whether there is any progress because Norman has asked me if there is any progress. So I have said to you that I have had discussions.

1 Q. I'm not aware that you have, but is it the case that
2 you did have discussions with Mr Davidson Kelly after
3 28 September 2000?
4 A. Yes.
5
6 Q. On the topic of the recoupment of the Tigris debt?
7 A. He has asked me - yes.
8
9 Q. He has asked you, "How is it going?", and you have
10 gotten on to your employees at AWB --
11 A. Yes.
12
13 Q. -- and had a report from them and passed it on to him?
14 A. Yes, well, I have wanted them to talk directly to
15 Norman, and I can't recall if they have talked directly to
16 him or if they have passed it through me.
17
18 Q. Did you ever report to him that at any stage there was
19 a plan to recoup that debt by adding it in to the contract
20 price of wheat?
21 A. No.
22
23 Q. You never said anything like that to him?
24 A. No, because, Mr Agius, I moved on in September 2001,
25 and up until that point in time the issue was getting
26 acknowledgment from the Iraqis of this obligation. I did
27 not - I was not involved in how it was going to be
28 restructured or repaid. I just - that - I moved on to
29 other things in the business.
30
31 Q. But you have said that from time to time he asked you
32 how it was going and that you obtained reports from
33 employees of AWB, or you invited employees from AWB to tell
34 him?
35 A. Yes.
36
37 Q. During the course of that did you ever pass on to him
38 yourself information to the effect that the money was going
39 to be recouped by the Iraqis by adding it into contracts
40 that the AWB had with the Iraqis for the sale of wheat?
41 A. No.
42
43 Q. Never said anything like that to him?
44 A. No.
45
46 Q. Did you learn of that prior to 2003?
47 A. No, I don't believe I did.

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Q. When you spoke to Mr Davidson Kelly, what conversations did you have with him about this matter, about the Tigris matter, after 28 September 2000?

A. He was interested if there was any reports back from the Iraq end, and I would go to my team who were responsible for that market and ask if they had heard anything back and let them know that Norman is hassling me, "Please see if there are any updates", and that was about the extent of it.

Q. Nothing beyond that?

A. Not that I recall.

Q. Did you meet with Mr Davidson Kelly after 28 September, up until early 2003?

A. We had the meeting - I met Mr Davidson Kelly at the Albert Park Lake function that we talked about the other day, you will remember you were asking me questions about that, so that was in - when was that? That was September 2000. I don't think I have met Norman since September 2000 up until whenever we had the dinner together - that, I think, was either - early 2005.

Q. So you met him at the Albert Park Lake function, which I think was on either 13 or 14 September 2000; is that right?

A. Yes.

Q. And then you didn't meet with him again until the dinner that you have just talked about?

A. No, I don't think so.

Q. Do you agree? Is that the substance of your evidence, that you didn't meet with him until the dinner?

A. Mr Agius, I don't think I did. I don't think so. I mean, I am worried that you may have a document there that shows that I did, but I just don't recall meeting him between that time and 2004. I just don't recall that.

MR AGIUS: Mr Commissioner, I wonder if that is an appropriate time? We would like to have the rest of this service agreement. Otherwise I have another topic to go on to, but I am proposing that perhaps I do that tomorrow.

THE COMMISSIONER: How long will that other topic take?

1 MR AGIUS: I don't know, Mr Commissioner. It deals with
2 the Ronly matter. It is quite involved, but I am prepared
3 to press on.

4
5 THE COMMISSIONER: I will take a brief adjournment of
6 10 minutes and then we will go on for a while, I think.

7
8 SHORT ADJOURNMENT

9
10 THE COMMISSIONER: Yes, Mr Agius?

11
12 MR AGIUS: Q. Mr Stott, when you came to AWB you learnt
13 that Ronly was being used as a conduit for payments of the
14 trucking fee; is that right?

15 A. Yes.

16
17 Q. Did you also learn that ship owners were being used
18 for conduits for the payment of the trucking fee, aside
19 from Ronly?

20 A. I didn't learn that as soon as I came to AWB, I learnt
21 that some time later, that ship owners were being used.
22 I just understood Ronly was being used.

23
24 Q. What was your source of information that Ronly was
25 being used in that way?

26 A. I was advised by the marketing team.

27
28 Q. Mr Emons?

29 A. No.

30
31 Q. He had left by then, had he?

32 A. He left, yes - he had left by then.

33
34 Q. Mr Hogan?

35 A. Yes.

36
37 Q. He knew that the payments were being made through
38 Ronly, did he?

39 A. I believe he knew that the payments were being handled
40 by the shipping people, so shipping were handling the
41 payments.

42
43 Q. Who told you in terms that payments were being made
44 through Ronly?

45 A. I don't recall specifically who told me, but it could
46 have been Michael Watson. I just don't recall specifically
47 who told me.

1
2 Q. And did you immediately have an issue with that?
3 A. Yes.
4
5 Q. And what was your issue, what struck you about that?
6 A. I thought it was very odd, why would we be making
7 payments through Ronly?
8
9 Q. But it wasn't at that time that you found out that you
10 were also making payments through ship owners aside from
11 Ronly?
12 A. No, I thought we were only making payments through
13 Ronly. I was not aware that we were making payments
14 through ship owners.
15
16 Q. It struck you as odd, "why were we making payments
17 through Ronly". Did you make inquiries?
18 A. Yes.
19
20 Q. Of whom did you make the inquiry or inquiries?
21 A. Michael Watson.
22
23 Q. What did Mr Watson tell you as to the reason why
24 payments were being made through Ronly?
25 A. I don't actually recall what he said, but I think he
26 said that that was the way that they had decided to make
27 the payments.
28
29 Q. Did he tell you why?
30 A. No, I don't think he told me why.
31
32 Q. Would you have wanted to know?
33 A. Yes.
34
35 Q. It struck you as odd?
36 A. It did.
37
38 Q. So did you press somebody for an answer as to why?
39 A. Yes.
40
41 Q. Who did you press?
42 A. I pressed Michael Watson, I think, and - probably
43 Michael Watson, I think, is the person I would have
44 pressed.
45
46 THE COMMISSIONER: Q. And what did he tell you?
47 A. That - I think the reason was that the company - that

1 they wanted to distance themselves from the payment
2 mechanism.
3
4 Q. Did you ask him why?
5 A. Yes.
6
7 Q. And what did he say?
8 A. That he had concerns about the - not being seen to be
9 paying it directly.
10
11 Q. Not being seen to be paying it directly to whom?
12 A. To Alia.
13
14 Q. And did you ask him why?
15 A. Yes.
16
17 Q. And what did he say?
18 A. I got a very vague answer, just that the company's
19 decided to pay it through the shipping companies, or,
20 sorry, through Ronly, I was not aware of the shipping
21 companies.
22
23 MR AGIUS: Q. Are you sure of that?
24 A. I'm - I feel confident of that, but I can't be
25 100 per cent certain that I wasn't aware of it being paid
26 through the shipping companies, I was aware of it being
27 paid through Ronly at that time, when I came back to AWB.
28
29 Q. You said, "I got a very vague answer, just that the
30 company's decided to pay it through the shipping companies,
31 or, sorry, through Ronly". Did you ask him who in the
32 company had decided to pay it through Ronly?
33 A. Yes.
34
35 Q. What did he say?
36 A. That this was all approved within the company and that
37 this was the agreed mechanism.
38
39 Q. All approved within the company - did he give you
40 specifics?
41 A. I don't recall getting specifics.
42
43 Q. Did he tell you whether or not it had been approved by
44 Mr Officer, or whether or not it had been approved by the
45 CEO or the general manager?
46 A. No, I don't - it was just generally accepted that he -
47 that it was approved by the United Nations and it was

1 approved in the contracts and it had gone to - the board
2 was aware of it, and this was the agreed arrangement that
3 we were pursuing.
4

5 Q. I don't want to lose focus here. I was asking you
6 about payments being made through Ronly.

7 A. Yes.
8

9 Q. Did Mr Watson tell you that the fact that it was being
10 paid through Ronly was approved by the United Nations?

11 A. No.
12

13 Q. There is the fact of the payment of trucking fees.

14 A. Yes.
15

16 Q. And I will just put that to one side.

17 A. Yes.
18

19 Q. I am really just focusing on the payments being made
20 through Ronly and through the shipping owners.

21 A. Yes.
22

23 Q. So Mr Watson told you that, within the company, it had
24 been approved that the payments could be made through
25 Ronly?

26 A. Yes.
27

28 Q. And he told you that that was because there was
29 concern that AWB did not want to be seen to be making the
30 payments directly?

31 A. Yes.
32

33 Q. And did you ask him why - what was the basis of that
34 concern?

35 A. Yes.
36

37 Q. What did he say about that?

38 A. The company just wanted to be distanced from this
39 payment mechanism.
40

41 Q. But did you ask him why would it be that the AWB
42 wanted to be distanced from the payment mechanism?

43 A. Yes, I believe I did.
44

45 Q. What did he say?

46 A. I don't think I got an adequate response. I don't --
47

1 Q. What response did you get?
2 A. That this was the mechanism that had been agreed upon
3 on how we would make - how the company would make the
4 payments to Alia, through Ronly.
5
6 Q. Did he tell you that Ronly was being paid a fee for
7 making these payments?
8 A. I don't think he told me that.
9
10 Q. How did you learn that information?
11 A. I think Ronly told me that.
12
13 Q. If we just go back to the conversation with Mr Watson,
14 can you recall whether or not the topic of making similar
15 payments through ship owners was raised in your
16 conversation with him?
17 A. He may have told me that that's what they were
18 originally doing back in 1999 and then they moved that to a
19 payment arrangement through Ronly - he may have told me
20 that when I talked to him, but I can't be certain.
21
22 Q. Did he tell you that payments were being made through
23 Ronly and through shipping owners at the same time?
24 A. No, I don't believe so.
25
26 Q. Did you then go and speak with any senior persons
27 within AWB to find out about this?
28 A. Yes.
29
30 Q. Who did you speak with?
31 A. I spoke to a number of people. I spoke to - I asked
32 Rex if he knew about it, and I can't recall if Rex knew
33 about it, on the way the payment mechanisms were being
34 made, that we were paying for inland transport. I'm not
35 sure if he was aware of the exact arrangements. I also
36 checked with the chairman at the time, Trevor Flugge.
37
38 Q. What did you say to him?
39 A. I asked him if he was aware of this arrangement.
40 I think I covered that off in my witness statement to the
41 Commission, Mr Agius.
42
43 Q. Well, as I read your witness statement, you say in
44 paragraph 26:
45
46 Following my return to the Australian Wheat
47 Board, which was by then AWB Limited, in

1 around July 2000 I was told that AWB
2 Limited was paying for the costs of inland
3 transport of wheat from the ports to all
4 governates. I was told by Rex Lister that
5 AWB Limited was paying these trucking fees
6 to Ronly, a trading house based in London.
7 I put an end to this arrangement because
8 AWB was deriving no benefit from them. Rex
9 Lister also told me that Alia was the
10 company to which these fees were paid.

11
12 You go on to say what you thought was the amount of
13 trucking fee and you say in paragraph 28:

14
15 At the time I first heard of the trucking
16 fees I made inquiries of AWB Limited staff
17 and the IGB to satisfy myself that payment
18 of the fees was made in accordance with UN
19 sanctions and the OFFP. I spoke to members
20 of the international sales and marketing
21 team about the trucking fees. Rex Lister,
22 Philip Hughes, Dominic Hogan and others
23 told me that DFAT and the AWB Limited board
24 were aware of the trucking fees and that
25 they had been approved by the Australian
26 Government and the UN. Trevor Flugge also
27 told me that he was comfortable with the
28 trucking fees so long as they were paid in
29 accordance with UN sanctions.

30
31 Now, that's all you have said about conversation with
32 Mr Flugge. What conversation did you have with Mr Flugge
33 about the payment of the trucking fees through Ronly?

34 A. I don't think I had a conversation with him about the
35 payment of trucking fees through Ronly.

36
37 Q. So when you said, "I asked him if he was aware of this
38 arrangement" and you think you covered that in your
39 statement, that was an arrangement about the payment of
40 trucking fees, not the arrangement about the payment of
41 them through a conduit like Ronly?

42 A. Yes.

43
44 Q. So who did you ask, then, about the payment of the
45 trucking fees through a conduit like Ronly?

46 A. Well, I think it was Michael Watson and also I spoke
47 to Ronly.

1
2 Q. Mr Watson told you that the company had approved it.
3 A. Yes.
4
5 Q. He couldn't give you a very satisfactory answer in the
6 end as to why?
7 A. Yes.
8
9 Q. Why it wanted to distance itself from payments to
10 Alia. Surely you went off within AWB to find the answer to
11 your question why was AWB wanting to distance itself from
12 the payments to Alia and using a conduit like Ronly?
13 A. Yes.
14
15 Q. And you went and spoke to Mr Lister?
16 A. Yes.
17
18 Q. And he told you, as you have set out in your
19 statement, that the payments were being made to Ronly, a
20 trading house based in London?
21 A. Yes.
22
23 Q. Did he tell you why?
24 A. No.
25
26 Q. So he couldn't answer the question that you hadn't got
27 a satisfactory answer to from Mr Watson?
28 A. No.
29
30 Q. Who did you go to then?
31 A. I would have probably gone to Mr Hogan and Mr Hughes.
32
33 Q. Well, did Mr Hogan know that the money was actually
34 being paid through a conduit like Ronly?
35 A. I don't think he did.
36
37 Q. Well, he says he didn't, but did he say to you that he
38 did?
39 A. I don't think he did.
40
41 Q. Did Mr Hughes know that the payments were being made
42 through a conduit like Ronly?
43 A. I can't be certain about that.
44
45 Q. You are still not getting a clear answer?
46 A. No, I didn't get a clear answer.
47

1 Q. So who did you go to then, to find out why it was that
2 the company had agreed to make these payments to Ronly or
3 through Ronly to distance itself from the trucking company?
4 A. I went to Ronly.
5
6 Q. But who else within AWB?
7 A. I can't be certain who else I went to, but I did seek
8 counsel widely within the --
9
10 Q. Did you go to Mr Lindberg?
11 A. No.
12
13 Q. Why not?
14 A. He wouldn't have been across that detail, in my view.
15
16 Q. But perhaps he ought to have been told?
17 A. Well, he was eventually told.
18
19 Q. But you didn't go to him to find out why the company
20 had agreed to this?
21 A. No.
22
23 Q. I take it --
24 A. I didn't report to Mr Lindberg, Mr Agius, at the time,
25 so it wouldn't have been appropriate for me to go to
26 Mr Lindberg.
27
28 Q. Who did you report to?
29 A. Mr Goodacre.
30
31 Q. Did you go to Mr Goodacre?
32 A. I believe I would have gone to Mr Goodacre.
33
34 Q. Did you find out from him the answer to your question,
35 why was it that AWB wanted to distance itself from these
36 payments to Alia?
37 A. No.
38
39 Q. What did he say to you?
40 A. I don't think he knew anything about it.
41
42 Q. So did you go to Ronly?
43 A. Yes.
44
45 Q. And did you ask Ronly why it was that the AWB wanted
46 to distance itself from the payments to Alia?
47 A. Yes.

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Q. What did Ronly say to you?
A. That the AWB wanted to distance itself from these payments, and that's why they set up this structure to assist AWB in distancing itself from it.

THE COMMISSIONER: Q. Yes, but why?
A. I never got a satisfactory answer to that, Commissioner, as to why. I just - that's what I was told.

MR AGIUS: Q. Well, surely you pondered over the question yourself - why would the AWB want to distance itself from the payments to Alia?
A. Yes.

Q. You hadn't got a satisfactory answer from anyone within AWB?
A. That's right.

Q. I take it Ronly couldn't tell you?
A. That's right.

Q. Well, what did you do?
A. Stopped it.

Q. You stopped what?
A. The payments via Ronly to Alia. Either we were comfortable that it was approved and legal or we were not. If it was not approved, then I would have stopped that. I was satisfied that people believed that it had UN approval and that, if that is the case, we would pay it direct. I don't need to be making any payments through Ronly.

Q. What answer did you get as to why it was that the AWB had wanted to distance itself from these payments in the first place?
A. I never got a satisfactory answer on that point, Mr Agius.

Q. I understand that, but that implies that you formed an opinion about the answer and the opinion you formed was that the answer wasn't satisfactory. What I am asking you is what was said to you - what was the answer - so that the inquiry can form its own opinion as to the satisfactory nature of the answer or otherwise. What was said to you?
A. I think I have covered off what was said to me, that

1 people were quite vague as to why we were using Ronly as a
2 conduit for the payment to Alia. I don't think I got a
3 satisfactory answer on that point from anyone and I was
4 just - I did seek counsel widely and no-one provided me
5 with a satisfactory response on that particular point.
6

7 Q. But you must have come to the conclusion that the
8 reason why the AWB had wanted to distance itself from these
9 payments was because of a belief that the payments might
10 not be legal?

11 A. No, I did not form that view at all.
12

13 Q. You must have come to a conclusion that somebody
14 within AWB management had formed a view that it would not
15 be a good thing for AWB to be associated directly with
16 these payments?

17 A. I had a view that these payments were being pushed
18 through Ronly because it was designed to provide some
19 economic benefit to Ronly. That was my view. It was not a
20 view that it was all about concern about distancing itself
21 from the sanctions, but it was a concern around Ronly was
22 getting an economic benefit out of the arrangements.
23

24 Q. You knew that the sanctions prevented payments being
25 made to Iraqi entities?

26 A. Yes.
27

28 Q. You knew that persons within AWB had not wanted it to
29 appear that AWB was making the payments directly to Alia?

30 A. That's what I was being told.
31

32 Q. Did you not conclude that the reason why AWB did not
33 want to make the payments directly to Alia was because of
34 some fear that the payments were being made in breach of
35 the sanctions?

36 A. No, I didn't conclude that.
37

38 Q. You drew a different conclusion, that these payments
39 were being made through Ronly so that Ronly would get an
40 economic benefit out of it?

41 A. That's the conclusion that I drew.
42

43 Q. At the time you drew that conclusion were you aware
44 that payments were also being made to ship owners, not
45 Ronly?

46 A. No, I don't believe that I was aware of that.
47

1 Q. Did you become aware of that later?
2 A. I think I became aware of that in December when we
3 went through the AA report.
4
5 Q. And when you became aware of that in December of 2000
6 did it not then occur to you that there must be a reason
7 why these payments were being made through ship owners
8 other than Ronly?
9 A. Yes, I had a view as to why those payments were being
10 made through ship owners.
11
12 Q. Did it not occur to you that the reason was the same
13 reason you had been given before, that AWB had wanted to
14 distance itself from the payments to Alia?
15 A. I think that's what people wanted me to believe, yes.
16
17 Q. But you weren't going to accept that?
18 A. No.
19
20 Q. Is that because you just didn't want to inquire into
21 the question of whether or not these payments might be
22 finding their way to the Iraqis?
23 A. No.
24
25 Q. So your reason, then, for stopping the use of Ronly as
26 a conduit for the payments was not because you accepted
27 that AWB wanted to distance itself from the payments; is
28 that what you say?
29 A. I think that's what I said, but can you just repeat
30 that for me, please? It is getting late, I'm sorry.
31
32 Q. Your reason for stopping the use of Ronly as a conduit
33 for the payments was not because you accepted that AWB
34 wanted to distance itself from the payments?
35 A. That's right.
36
37 Q. You didn't accept that reason?
38 A. No.
39
40 Q. You thought that reason wasn't the right reason?
41 A. That's right.
42
43 Q. And you stopped the payments going through Ronly
44 because, what, you didn't want Ronly to be receiving a fee?
45 A. I thought there was some economic benefit to Ronly by
46 channeling the freight arrangements through Ronly. So
47 I thought Ronly were receiving some economic benefit. That

1 was my mindset.

2

3 Q. What would be wrong with that, if it was achieving the
4 purpose of distancing AWB from the payments to Alia?

5 A. I don't believe that it was ever that purpose.

6 I didn't - that was not what I believed to be the case,

7 Mr Agius. I thought it was the case that Ronly were

8 getting some special favours from AWB from which they were
9 deriving an economic benefit.

10

11 Q. And did you find out that Ronly was receiving 20 cents
12 US a metric tonne --

13 A. Yes, I did.

14

15 Q. -- for being a conduit?

16 A. Yes.

17

18 Q. And is that why you put a stop to the payments through
19 Ronly?

20 A. Because of the 20 cents a tonne?

21

22 Q. Well, why did you put a stop to the payments through
23 Ronly?

24 A. Because it made no sense to me to be paying Ronly
25 through this mechanism. If we believed, as I did at that
26 time, that we had UN approval to pay for inland transport,
27 then we would make those payments direct. It made no sense
28 to me whatsoever as to why we would be paying that money to
29 Alia through Ronly.

30

31 Q. So why put a stop to it?

32 A. Because it didn't make sense to me why we would do
33 that. If we are satisfied that it was legal, then we would
34 pay the money direct.

35

36 Q. And you satisfied yourself that it was legal?

37 A. Yes.

38

39 Q. And for that reason you decided to pay the money
40 direct?

41 A. Yes.

42

43 Q. Now, I thought you said that you discovered that Ronly
44 were making money out of it?

45 A. Well, I mean, I was suspicious that Ronly were making
46 money out of it.

47

1 Q. And you discovered that they were?
2 A. No, I could never find out how they were making money
3 directly out of the Iraq freight, other than 20 cents a
4 tonne, although there were some - there appeared to be some
5 connections with them and their freight arrangements with
6 vessel owners; there were some connections with the Russian
7 traders; there was a myriad of connections that Ronly had.
8 I could not work out how they got an economic benefit other
9 than through the 20 cents on Iraq freight.
10
11 Q. Well, did you put a stop to that?
12 A. Yes.
13
14 Q. When?
15 A. When we stopped the payment mechanism through Ronly.
16
17 Q. That's not right, though, is it?
18 A. What's not right?
19
20 Q. Isn't it the case that you stopped the payment
21 mechanism through Ronly, but you allowed the 20 cent per
22 tonne fee to be charged by Ronly and that you permitted AWB
23 to pay that fee?
24 A. Yes.
25
26 Q. So you never stopped the payment of the 20 cent per
27 tonne fee to Ronly at the same time that you stopped using
28 Ronly as a conduit for the payments?
29 A. That's right.
30
31 Q. Why?
32 A. I just wanted to stop using Ronly. Ronly were - I was
33 advised that Ronly was very well connected within the
34 company and I wanted to get out of paying the freight
35 through Ronly. Having satisfied myself that it was - that
36 the UN had approved the payment of freight, it was paid
37 directly to the Jordanian-based trucking company, being
38 Alia. So I didn't want to have an argument with Ronly that
39 they had entered into a contract of affreightment and
40 therefore they were entitled to receive this 20 cents.
41 They were - by paying them the money, although they were no
42 longer providing the service, they were therefore
43 ambivalent and I wouldn't have an argument with Ronly on
44 that point. I had many arguments with Ronly when I started
45 back - that would be in July.
46
47 Q. What did you learn of Ronly's connections with the

1 AWB? You said they were well connected; is that right?

2 A. Yes, well, I understood that they --

3

4 Q. There appeared to be some connections with them?

5 A. Yes.

6

7 Q. What was it about the connections with Ronly that
8 concerned you?

9 A. Well, I was told that they were highly regarded by the
10 previous management team, that the company was also looking
11 at establishing a joint venture with them, which I was
12 asked to review at that time, and there were many other
13 relationships with Ronly. They were selling wheat into
14 Turkey and a variety of other countries around the Black -
15 well, attempting to try and break into other countries
16 around the Black Sea region.

17

18 Q. But the fact is, isn't it, that you stopped payments
19 through Ronly and you permitted the payment of the 20 cents
20 per tonne to continue with Ronly?

21 A. Yes.

22

23 THE COMMISSIONER: Q. Why would you do that?

24 A. Because I was trying to --

25

26 Q. They are no longer providing a service of any sort -
27 why would they get money from it?

28 A. Commissioner, I was having many arguments with Ronly
29 at the time. I was seen as the person who was vigorously
30 opposed to entering into the joint venture that the company
31 was well advanced on discussions with. I saw that as being
32 a - not a sensible arrangement. I was fighting Ronly on a
33 number of other fronts in respect to the business that we
34 were putting into Turkey. To me that didn't make economic
35 sense, we were selling large volumes of wheat to Turkey,
36 but the price returns that we were achieving from that
37 market were low once you took into account the commission
38 that Ronly were getting, and here was yet another
39 arrangement with Ronly, so rather than continue with the
40 arrangement, Ronly had set up a structure, supposedly to
41 support the AWB. They had agreed a fee with the AWB when
42 that structure had been set up. I inherited that
43 arrangement, I was uncomfortable with that arrangement, so
44 I put a stop to that arrangement. So that I didn't have to
45 end up having to have a fight with Ronly on this particular
46 issue, I agreed that we would continue to pay them for the
47 service, although they were no longer providing the

1 service, so that I wouldn't have to have a dispute with
2 Ronly on that particular issue. A contract had been
3 entered into with Ronly and I was trying to get out of that
4 contract with Ronly, and that way was the mechanism by
5 which I was able to get out of it.

6
7 MR AGIUS: Q. But you weren't getting out of the
8 contract, were you? So far as the liability of AWB, you
9 permitted that liability to continue, and you continued to
10 pay Ronly. How would that help you to get out of the
11 contract with Ronly?

12 A. Because I know my - because Ronly got the value and
13 what they expected to get out of that arrangement
14 irrespective of whether they performed the service. I had
15 stopped - I put a stop to the service as soon as I became
16 aware of it and we started paying the freight to Alia
17 directly.

18
19 Q. No, I am asking you about Ronly. How could you get
20 out of the contract with Ronly by removing their obligation
21 to do anything and by continuing AWB's obligation to pay
22 them money?

23 A. Well, I am effectively - I am effectively maintaining
24 their position that they are - they have suffered no
25 economic loss by me coming in and changing the
26 arrangements. They had entered into a contractual
27 arrangement with the AWB to make these payments for the
28 AWB, so they expected to receive an economic benefit. By
29 me wanting to stop that, I have effectively paid them what
30 benefit they expected to receive irrespective of not
31 performing the service. So that was the quickest way out
32 of the contract for me. I wanted to get out. I didn't
33 want to have an argument with Ronly on the fact that they
34 expected to receive an economic benefit for performing the
35 service. I was happy to pay them for that benefit even
36 though they were not doing it just so I could get out of
37 the contract and pay direct.

38
39 Q. Did you clear that with anybody within AWB? Did you
40 get authority to do that?

41 A. I would have kept my manager informed of the
42 arrangements, yes.

43
44 Q. Did you tell Mr Goodacre that you were going to permit
45 AWB to continue paying Ronly the 20 cents a tonne, even
46 though Ronly was no longer a conduit for the payments to
47 Alia?

1 A. I believe I would have.
2
3 Q. You believe you did?
4 A. I believe I would have, yes.
5
6 Q. Nevertheless, the payments continued to be made
7 through ship owners rather than direct to Alia; is that the
8 case?
9 A. Shouldn't have been.
10
11 Q. Well, did you discover that payments were being made
12 through ship owners?
13 A. No.
14
15 Q. Did you never discover that?
16 A. I became aware that ship owners were originally the
17 mechanism for making the payment and then Ronly were
18 ultimately put in place through this arrangement that we've
19 just discussed. I didn't know that it was continuing on
20 through ship owners while - I thought we had put a stop to
21 it and we were paying direct.
22
23 Q. At the time you put a stop to the payments being made
24 through Ronly, were you aware that payments were being made
25 through ship owners aside from Ronly?
26 A. I don't believe so. I thought that the payments were
27 only going to be - had been structured to pay through
28 Ronly.
29
30 Q. Now, can we bring up, please, AWB.5058.0251. This is
31 an email from Michael Watson to Mark Emons of 19 June 2000.
32 I wonder if you would read that, please.
33
34 MR AGIUS: I tender that email, Mr Commissioner.
35
36 EXHIBIT #286 EMAIL FROM MICHAEL WATSON TO MARK EMONS,
37 DATED 19/6/2000, BARCODED AWB.5058.0251
38
39 MR AGIUS: Q. Have you read that, Mr Stott?
40 A. I have.
41
42 Q. Is the "CS" you?
43 A. I don't know. I mean - that's my initials, but this
44 has got me confused on the date. It is 19 June 2000.
45
46 Q. Yes.
47 A. I didn't start until 10 July, officially, and I was in

1 for about 10 days prior to that, but - so, on the basis of
2 that, I can't see how this could be me, if that date is
3 correct - unless the date is wrong.

4

5 Q. Well, will you assume that the "CS" is you? Did you
6 make rounds, as it were, going around to various people
7 within AWB prior to officially taking up your position?

8 A. Yes.

9

10 Q. And in the course of that did you speak to Mr Watson?

11 A. I may have spoken to Mr Watson, yes.

12

13 Q. Did you ask him about the Iraqi problem and what the
14 issues were, et cetera, with the contracts with Iraq?

15 A. I have asked him about the Iraq issue, but not in June
16 2000.

17

18 Q. Did you ask him who was in charge, and were you told
19 that it was Yousif, and were you shown a business card?

20 A. I don't recall that, but I may have been.

21

22 Q. Did you tell Mr Watson that you knew the Rahman
23 family?

24 A. I don't recall that.

25

26 Q. Did you say that the Rahman family was very powerful
27 in Iraq?

28 A. No, I don't recall knowing the Rahman family.

29

30 Q. Did he tell you that Yousif was part of the ruling
31 family?

32 A. I don't recall that.

33

34 Q. Did you ask after Zuhair?

35 A. I would have asked after Zuhair. I may have, but
36 I don't recall asking him.

37

38 Q. Did you make a plan to speak to him the next day?

39 A. To who?

40

41 Q. Mr Watson?

42 A. No, I don't recall that.

43

44 Q. Did he tell you that the Iraq market was not a black
45 and white issue?

46 A. No, I don't recall that.

47

1 THE COMMISSIONER: Q. Are you sure you didn't start
2 earlier than 1 July?
3 A. Quite sure. Very sure.
4
5 MR AGIUS: Q. Who is "Tim H"?
6 A. I don't know, Mr Agius - "Tim H".
7
8 Q. Whereabouts did you physically set up within AWB once
9 you started?
10 A. I set up on one of the marketing desks.
11
12 Q. You set up on one of the marketing desks - near
13 Mr Emons?
14 A. Mr Emons had left before I officially started.
15
16 Q. Near where Mr Emons had been sitting?
17 A. I might have been actually in his seat, yes.
18
19 Q. So did Mr Watson tell you what the Iraqi problem was
20 and, in the course of that, did he explain to you the
21 proposal not to be directly associated with the payments to
22 Alia?
23 A. No, I don't recall that.
24
25 Q. But it was your purpose, wasn't it, to go around and
26 speak to various people and to obtain from them an outline
27 of what they were doing and where they perceived problems
28 to be?
29 A. I asked my entire marketing team to respond to me on
30 three questions, and I asked them to provide me with a
31 bullet-point response on each of those questions, and
32 I undertook to interview every member of my marketing team
33 that I was inheriting and I did that - I commenced that
34 interview process around 10 days before I officially
35 started. I think I concluded it after I had started, but
36 I sat and spoke to every person in the group - I think it
37 was about 45 in total. Michael Watson was not a member of
38 the marketing team; he was a member of the - head of the
39 freight group reporting to a different person. So Michael
40 was not included in my initial discovery process.
41
42 Q. Well, did you go and speak to him?
43 A. I may have.
44
45 Q. Well, you have told us in the course of the last half
46 hour's evidence that you had conversations with him --
47 A. Yes, I believe I did.

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Q. -- about the payment of the fee to Ronly and why it had come about?

A. Yes, I recall - yes, I believe I had a conversation with Michael Watson, yes.

Q. Might that not be the conversation to which Mr Watson is referring in this email of 19 June 2000?

A. No, I don't believe it is.

MR AGIUS: Is that a convenient time, Mr Commissioner?

THE COMMISSIONER: Yes, very well. We will adjourn until 10am

AT 5.02PM THE HEARING WAS ADJOURNED TO TUESDAY, 14 FEBRUARY 2006 AT 10AM

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