

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 Friday, 20 January 2006, at 11.30am

1 <ANDREW ALEXANDER LINDBERG, On former oath: [11.36am]

2
3 MR AGIUS: Mr Commissioner, overnight the inquiry received
4 a bundle of documents which we have printed and put into a
5 file entitled "Material Relating to Tigris Handed to the
6 Commission on 19 January 2006". I tender that bundle and
7 ask that it be marked as a confidential tender bundle.

8
9 THE COMMISSIONER: Yes, I'll mark it as a confidential
10 exhibit.

11
12 EXHIBIT #68C BUNDLE OF DOCUMENTS IN FILE ENTITLED "MATERIAL
13 RELATING TO TIGRIS HANDED TO THE COMMISSION ON 19/1/2006"

14
15 SHORT ADJOURNMENT

16
17 THE COMMISSIONER: That volume of documents in relation to
18 Tigris that the Commission received last night is marked
19 confidential exhibit 68.

20
21 MR AGIUS: Yesterday I was taking Mr Lindberg through the
22 Arthur Andersen report, which I believe I neglected to
23 tender. Might I tender the report together with the
24 appendices as a confidential exhibit. It's our intention
25 at this stage to keep the report and appendices
26 confidential, save for those portions which are read on to
27 the transcript.

28
29 THE COMMISSIONER: Yes. The Arthur Andersen reported
30 dated December 2000 will be confidential exhibit 69.

31
32 EXHIBIT #69C ARTHUR ANDERSEN REPORT, DATED DECEMBER 2000
33 WITH ANNEXURES

34
35 THE COMMISSIONER: There will be on the public record
36 those portions of the report that were read in public
37 yesterday.

38
39 <EXAMINATION BY MR AGIUS CONTINUING:

40
41 MR AGIUS: Q. Mr Lindberg, it is a formality, but an
42 important one: you do understand that the oath that you
43 took when you first came to give evidence applies to you
44 all through the evidence that you gave?

45 A. Yes.

46
47 Q. Do you still have your copy of confidential

1 exhibit 69C, the Arthur Andersen report, in front of you?
2 A. Yes.

3

4 Q. I've also provided you with a sheet which I will
5 tender and have marked as a confidential exhibit. It's a
6 document we have had produced overnight, Mr Commissioner,
7 which, for ease of reference, lists the names in the Arthur
8 Andersen report together with the abbreviations or
9 pseudonyms that have been adopted from AA1 through to AA7.
10 There are two names on this list that we are yet to reach
11 in the evidence. We'll come to those in the course of the
12 morning. Might that also be marked as a confidential
13 exhibit.

14

15 THE COMMISSIONER: It will be added to confidential
16 exhibit 69.

17

18 EXHIBIT #69C ADDITION OF LIST OF PSEUDONYMS AA1 TO AA7 AND
19 THE NAMES RELATING TO THE PSEUDONYMS

20

21 MR AGIUS: Q. I believe, Mr Lindberg, you have a copy of
22 that document, the one-page document. You'll have it
23 available for ease of reference if you have any doubt about
24 the person to whom I'm referring when I use an "AA"
25 reference. If you could go to the barcode page 0118 of
26 exhibit 69C, which is page 12 of the report. You'll see
27 that that, firstly, the risk ranking in relation to the
28 matters that we covered yesterday was high and that the
29 recommendations were, as listed:

30

- 31 . Negotiations and meetings to be recorded
- 32 and placed on file;
- 33 . Management to review/audit files
- 34 . To establish a mechanism for staff to
- 35 report matters of concern;
- 36 . Full involvement of the legal section to
- 37 be obtained in relation to non-standard
- 38 arrangements.

39

40 You'll see that in the report, Mr Lindberg?

41 A. Yes.

42

43 Q. You will see, above the words "other matters" on that
44 same page, the last matter that Arthur Andersen had
45 reported upon was that matter we were dealing with
46 yesterday, that there had been a recent increase in the
47 trucking cost of \$45 a metric tonne, that that appeared to

1 be high, and that there may be a risk that this money is
2 being diverted to other purposes, "There may be a risk to
3 AWB of excessive trucking fees". Overnight, have you had
4 an opportunity to think over whether or not you saw a copy
5 of this report exhibit 69C?

6 A. I have, and I can't recall seeing a copy.

7

8 Q. Can I ask you to go to 0121, page 15 of the report,
9 under the heading "2.3 Pakistan". Rather than take you
10 through all of the investigations, I just propose to take
11 you to the findings, which were as follows:

12

13 During our review of [AA1] involvement with
14 Pakistan we looked at the following areas:

15 . Meetings in London with the agent --

16

17 who I'll refer to as AA6:

18

19 . Size of the agency payments compared to
20 other agents used by AWB;

21 . Indemnity clause placed in Deed of
22 Release;

23 . Concern over the new legislation of the
24 Foreign Corrupt Practices Act; and

25 . No signed contract made available for
26 Pakistan Agent.

27

28 That deed of release was something about which you had some
29 knowledge, was it not, Mr Lindberg?

30 A. Yes.

31

32 Q. You had approved of a deed of release between AA1 and
33 AWB Limited?

34 A. Yes.

35

36 Q. Had you approved of it before this report had been
37 received?

38 A. I can't recall. I may have.

39

40 Q. Let's go through this and see whether it refreshes
41 your recollection. There are two agents in Pakistan, AA6
42 in Islamabad and a person who I'll refer to as "AA7" in
43 Karachi:

44

45 During our interviews we established that
46 [AA6] appeared to be the agent that raised
47 the highest level of risk. [AA1] met with

1 the agent [AA6] on a number of occasions in
2 both London and Pakistan. [AA6] has a
3 house in London. [AA1] has met with [AA6]
4 in the presence of both [AA2] in London and
5 [AA3] in Pakistan.
6

7 AA2 and AA3, you will recall, were employees of AWB:
8

9 The commission agreement was detailed in an
10 undated signed document which recorded that
11 [AA6] was to agent as agent for the sale of
12 1 million tonnes of wheat to the Pakistan
13 government, referred to as MINFA, for the
14 period commencing 1 August 1999 and ending
15 31 July 2000. The applicable commission
16 was USD4 per tonne. The agreement did not
17 specify any performance criteria or detail
18 any actions that would be required on the
19 part of the agent.
20

21 We received a copy of a fax of the
22 agreement from [AA2]. He received a copy
23 from [AA6] on 13 December 2000. The
24 document contains a number of integrity
25 risk red flags. The agreement is not
26 dated. The original was not available from
27 AWB management on request. The agreement
28 contains no description of what is required
29 of the agent by AWB and there are a number
30 of fax information lines on this copy of
31 the document. This indicates that the fax
32 may not be a copy of the original document.
33

34 On 10 June 2000 [AA1] was requested by the
35 legal department to provide a copy of the
36 Pakistan agreement with [AA6]. He did not
37 produce the signed agreement prior to his
38 resignation on 3 July 2000. Similar
39 agreements with Sri Lanka and Fiji were on
40 the file. An unsigned and undated copy of
41 an agreement was located on the file
42 sometime after the request.
43

44 The level of commission appears to be high
45 in relation to other agent commissions.
46

47 Then there's a reference to the agents commissions which

1 relate to Sri Lanka and Fiji and a note that the Fiji
2 agreement had identifiable performance criteria that can be
3 reasonably measured. The report goes on:

4
5 The legal department identified that [AA4]
6 and [AA1] were concerned about the new
7 foreign corrupt practices legislation
8 enacted on 19 December 1999. Their main
9 concern was in relation to payments made to
10 the Pakistan agents. As a result of this
11 concern, when [AA4] exited AWB, he stated
12 to the legal department that, if he did not
13 obtain an indemnity in relation to payments
14 to agents in his release document, he would
15 go to lawyers. He further informed Legal
16 that he did not deal with these agreements
17 personally but was responsible as the
18 general manager.

19
20 [AA1] was concerned about the new
21 legislation and called Legal on his mobile
22 phone for advice in relation to the
23 implications on his way to Pakistan. When
24 [AA1] resigned a short period after the
25 exit of [AA4], he requested the same
26 indemnity clause be included in his release
27 documentation. [AA1] dealt directly with
28 the Pakistan agents. Once the new
29 management took over, the agreement with
30 Pakistan was cancelled. We were informed
31 that [AA6] threatened that payments of
32 outstanding receivables from MINFA --

33
34 you will recall that that was a reference to the Pakistan
35 government --

36
37 to AWB would not continue if the agreement
38 was cancelled. [AA2] was concerned that
39 the payments would cease if the agreement
40 was cancelled.

41
42 They state that they have reviewed AAT's involvement in
43 this issue in another section of the report:

44
45 At the time of writing this report,
46 payments were continuing to be made by
47 Pakistan in accordance with the repayment

1 schedule. We were not provided evidence of
2 work performed by [AA6] other than
3 providing AWB employees entertainment in
4 London and Pakistan and transport to
5 arranged meetings in Pakistan. [AA3]
6 informed us that he had received a carpet
7 in Pakistan and a watch on another
8 occasion.

9
10 Then we go to the conclusion and recommendations:

11
12 There are a number of integrity risks
13 indicated in the arrangements that may have
14 been in place relating to the agent [AA6]
15 in Pakistan. The risks are highlighted by
16 the concerns shown by [AA4] and [AA1] in
17 relation to their reaction to the foreign
18 corrupt practices legislation and the
19 requirement for indemnity clauses in their
20 release documents.

21
22 Further, the amount paid to the agent was
23 high relative to other agents and was not
24 adequately detailed. The performance was
25 not supported by the fact that payments
26 have continued despite the agent's claim
27 that he would prevent them. The major
28 integrity risk is that the amount paid to
29 [AA6] --

30
31 that's the Pakistan agent --

32
33 would be sufficient to enable him to make
34 payments for Pakistan government officials.
35 Examples of reasons for payments might
36 include encouragement for timely account
37 settlement or to increase the chance of
38 success in tender for wheat sales, both of
39 which carry a high risk for AWB. It is
40 difficult for AWB to control an agent in
41 these circumstances.

42
43 The risk rating is given as high and the recommendations
44 are as follows:

45
46 . AWB to prepare a strategy and policy in
47 relation to the Foreign Corrupt Practices

1 Act.
2 . Agents to be reviewed on a regular basis
3 in relation to performance and achievements
4 on behalf of AWB.
5 . Legal to be consulted prior to any
6 agreement or contract with agents.
7 . Payments not to be made by AWB until
8 signed documents are sighted by Legal.
9

10 Were those recommendations brought to your attention,
11 Mr Lindberg?

12 A. My recollection is that I was briefed on the
13 recommendations that flowed from this report - how
14 specifically I can't recall - but it's my understanding
15 that the recommendations made were progressively
16 implemented.
17

18 Q. Even before this report, though, Mr Lindberg, you had
19 been involved in approving the deed of release --

20 A. Mmm-hmm.
21

22 Q. -- which AA1 signed, had you not?

23 A. Yes.
24

25 Q. In the course of that approval process, you must have
26 been told about the concerns concerning AWB's relationship
27 with the Pakistan agent AA6?

28 A. I can't recall that specifically. I have no specific
29 recollection of that. I remember the release.
30

31 THE COMMISSIONER: Q. Did you approve it?

32 A. I did.
33

34 Q. Presumably knowing what it was that you were
35 releasing?

36 A. I approved it on the basis of the advice that I recall
37 taking at the time from HR and Legal about it.
38

39 Q. Did they explain to you why that release clause was
40 necessary?

41 A. I can't recall that.
42

43 MR AGIUS: Q. Were you not told that it was AA1 who was
44 requiring a clause in the release because of his concern
45 about the foreign corrupt practices legislation?

46 A. I don't have a specific recollection of that.
47

1 MR AGIUS: Is it possible, court operator, to put up
2 WST.0002.0028 without indicating or without demonstrating
3 on the screen the first three lines of the document? Is it
4 possible to bring up just clause 7?
5

6 THE COMMISSIONER: Could we give a copy to the operator
7 with a blank page so that he can mask the rest of it?
8

9 MR AGIUS: We can do that. I'll show it to Mr Lindberg on
10 its way to the operator so he will see the whole of the
11 document.
12

13 THE COMMISSIONER: Is it just clause 7?
14

15 MR AGIUS: Just clause 7, yes.
16

17 THE COMMISSIONER: Just the last three lines, that's all.
18

19 MR AGIUS: Q. Whilst you have the whole of the document
20 in front of you, Mr Lindberg, it bears some handwriting at
21 the top. Does it say "approved" with your signature and
22 the date 3/7/00, indicating 3 July 2000?
23

24 A. Yes, that's my signature.
25

26 Q. Under the word "approved"?
27

28 A. Yes.
29

30 Q. So you approved this document which is entitled a
31 release --
32

33 A. Yes.
34

35 Q. -- on 3 July 2000?
36

37 A. Yes.
38

39 Q. We've now put up on the screen clause 7, which reads:
40

41 AWB acknowledges that it (by its Board and
42 Chief Executive Officer) authorised agency
43 payments during the period 15 December 1999
44 to 28 June 2000 to overseas agents for
45 sales.
46

47 Do you see that?
48

49 A. Yes.
50

51 Q. That was an acknowledgment by AWB that, by its board
52 and by you, and I imagine by your predecessor, it had
53

1 authorised agency payments during that period, 1999 to
2 28 June 2000?

3 A. Yes.

4
5 Q. And that date range - 15 December 1999 to 28 June
6 2000 - covers a period where you were CEO and where
7 Mr Rogers had been CEO before you?

8 A. Yes.

9
10 Q. Do you know who signed this release on behalf of AWB?

11 A. I can't recall.

12
13 Q. When you approved this document, what agency payments
14 did you have in mind were caught by clause 7?

15 A. Look, I don't have a specific recollection of any
16 particular payments in mind. As I recall, I was advised
17 that agency payments had been made. I acted on the advice
18 I received, and I believe that advice was that this
19 release - this is my recollection, that this release didn't
20 protect them to the extent that they did things that
21 weren't within the approved policies or were unlawful.
22 That was my advice at the time, as I recall.

23
24 THE COMMISSIONER: Q. Didn't protect them from what?

25 A. Well, I don't know - from anything they might have
26 done that didn't accord with the policy. So I believe that
27 was the substance of what I was advised.

28
29 MR AGIUS: Q. When you say didn't protect them, are you
30 referring to not protecting them - that is not protecting
31 AA1 - from prosecution under the foreign corrupt practices
32 legislation?

33 A. Well, look, I can't recall the specifics of the
34 advice. I just have my recollections of what I understood
35 the position to be at the time, and that was that I was
36 advised that there were payments, that the matter had been
37 reviewed, I had received advice and the advice was that it
38 was okay to approve this.

39
40 Q. Did you inquire as to whether or not the alleged
41 authorised agency payments referred to in clause 7 were,
42 nonetheless, illegal?

43 A. I can't recall.

44
45 Q. Were you told as to whether or not those payments were
46 legal or illegal?

47 A. I can't recall.

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THE COMMISSIONER: Q. Did you require the legal department to give you advice in writing?

A. Look, I can't recall, but I do recall that I asked the matter to be reviewed, and I do recall getting advice on the matter, and on that advice I ultimately believed it was appropriate to approve it.

MR AGIUS: Q. Was this another of those legal reviews?

A. I believe I took advice at the time. I can't recall whether it was written advice or oral advice, but there would have been, I assume, recommendations. This just wouldn't come into my office like this. There would have been some recommendations and advice given. I mean, I'd just joined the company and I didn't know all about this.

Q. Indeed. No doubt people within AWB are endeavouring to locate any such documents, if they exist, but were you given a written briefing about this? After all, it is an acknowledgment by the board and by yourself, and you were approving it at least in respect of some period of time where you were not associated with AWB. So I ask you, were you given a written briefing about this?

A. Look, I can't recall, but I do recall that I received advice.

THE COMMISSIONER: Q. From whom?

A. I believe it was from legal and HR, and there may have been input from the manager of the area.

Q. Was that Mr Cooper?

A. Well, I meant, sorry, in addition to legal and HR, probably the person responsible for that area of operation at the time, which - and I can't remember the exact timing, but it may well have been Mr Goodacre at that time.

MR AGIUS: Q. What was intended to be the effect of this clause if it was not meant to offer AA1 comfort that he had in fact been authorised to make such agency payments as he had made?

A. Well, again, my recollection is that I was advised that agency payments had occurred, and I think the substance of the advice was that he would have had to operate within the policies and lawfully, as part of the procedure.

THE COMMISSIONER: Q. He would have to operate within

1 the policies and lawfully? I just didn't hear what you
2 said: operate within the policies and lawfully, did you
3 say?

4 A. Yes.

5

6 Q. Why would he need a release?

7 A. Well - well, no doubt - well, I think it's likely that
8 I inquired at the time and I would have received some
9 advice about that.

10

11 MR AGIUS: Q. What Arthur Andersen reported in December
12 2000 was that the legal department had identified that both
13 AA4 and AA1 were concerned about the new foreign corrupt
14 practices legislation enacted on 19 December 1999 and that
15 their main concern was in relation to payments made to the
16 Pakistan agents. In those circumstances, is it likely that
17 you would have been told about that matter as a background
18 to the inclusion of clause 7 in the agreement?

19 A. Look, I just can't recall.

20

21 Q. One of the reasons why I'm pressing you on this,
22 Mr Lindberg, is that foreign corrupt practices legislation
23 was in fact introduced at the end of 1999, and it seems
24 that at least your legal department was put on notice about
25 that. What was done within AWB to ensure compliance with
26 that legislation - that is, during your period of
27 stewardship of the AWB?

28 A. Well, I believe there were training programs and other
29 things put in place, including a complete review of agency
30 payments and commissions. That was one element of action,
31 but there were a range of others.

32

33 Q. Do you know whether or not any attention was paid to
34 the possibility that the transport fee or the aftersales
35 service fee might have included components similar to these
36 components - that is, money which could be used to pay
37 individuals for assistance in gaining contracts.

38 A. I don't know, but not by me.

39

40 Q. This release speaks of an acknowledgment by the board
41 of AWB. Did you take this matter to the board prior to
42 your approval on 3 July 2000?

43 A. I can't recall. I honestly can't recall.

44

45 Q. Is it likely, if the document records an
46 acknowledgment by the board and by you, that in fact the
47 board had notice of this release and of its terms?

1 A. Look, I can't recall. Perhaps I discussed it with the
2 chairman at the time. I just can't --

3

4 THE COMMISSIONER: Q. That wouldn't be an adequate
5 response. It's not what the document says.

6 A. Well, I just can't - I can't recall how that occurred,
7 what advice I received and what discussions might have been
8 had.

9

10 Q. But would you sign or approve a document like this
11 saying that the board had authorised various payments
12 without inquiring of the board whether they had?

13 A. Well, I believe I would - I believe I would have, and
14 I believe I did act on the advice that I was given, and
15 that could have been one component of that advice.

16

17 Q. It makes it the more curious that you didn't require
18 this advice to be in writing. You see, you'd just arrived
19 at this company some two or three months before. You were
20 being asked to release a person, acknowledging that what he
21 had done had the approval of the board and the chief
22 executive, which covered a period of time when you were not
23 there. You say you acted on the basis of advice, but you
24 didn't require there to be given to you a memorandum
25 setting out both the factual circumstances and the legal
26 circumstances which would justify you authorising this
27 document?

28 A. There may have been one. I just can't recall it.

29

30 THE COMMISSIONER: Do we have such a document, Mr Agius?

31

32 MR AGIUS: Not that we've been able to locate, but I'm
33 sure my friend is doing what he can to obtain it for us.

34

35 Q. I now have an edited copy of this document which will
36 have to be rebarcoded, but the original document has the
37 barcode WST.0002.0028. I tender that document as a
38 confidential exhibit. I have an edited version of that
39 document, from which has been removed such material as
40 might tend to identify AA1, and I will tender that, which
41 will need to be rebarcoded, as a public exhibit.

42

43 THE COMMISSIONER: Yes. The document headed "Release",
44 with names blanked out, will be confidential exhibit 70.

45

46 EXHIBIT #70C DOCUMENT HEADED "RELEASE" WITH NAMES NOT
47 BLANKED OUT, BARCODED WST.0002.0028

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EXHIBIT #46 COPY OF DOCUMENT HEADED "RELEASE" WITH NAMES
BLANKED OUT

MR AGIUS: Q. Mr Lindberg, you'd agree that clause 7 is
a most unusual sort of clause to see in a release document?
A. I don't know.

Q. Would you agree that it really can only be understood
against a background of concern that one or other party
might have expressed concerning whether or not payments
that were made had in fact been authorised by AWB?

A. Perhaps that's an interpretation, yes.

Q. Did you approve a similar release for AA4?
A. I believe I did.

Q. In similar circumstances?
A. Yes.

Q. In other words, based upon advice that you had
received --
A. Yes.

Q. -- and, again, if I were to ask you whether that were
oral or written advice, your answer would be in relation to
AA4?
A. I'm not sure. I can't recall whether it was written
or oral.

THE COMMISSIONER: Do you know the date of the document,
Mr Agius?

MR AGIUS: I don't think we do, Mr Commissioner. I do not
believe we have it. If we do, I'll have it turned up.

Q. Do you know whether or not the board was informed of
the true nature of the payments that were made to the
Pakistan agent at any time?
A. I don't know.

Q. Do you know whether or not the board was informed of
the concern that had evidently been expressed by AA1 and
AA4 about the effect of the foreign corrupt practices
legislation on the payments that had been made and on their
legal position?
A. I don't know.

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Q. Do you know whether or not the payments which were being made to the agent of \$4 a tonne were terminated before the 1 million tonnes had been delivered?

A. I can't recall whether they were or they weren't.

Q. In other words, do you know whether or not this Pakistan agent received \$4m in respect of whatever it was that he did pursuant to whatever arrangement there was between himself and AWB?

A. Sorry, could you repeat that?

Q. Do you know whether the agent ever received the \$4m?

A. I don't know.

Q. You appreciate how the \$4m figure is arrived at, if you go to page 0121, which is page 15 of the report:

The commission agreement was detailed in an undated, signed document which recorded that [AA6] was to act as agent for the sale of 1 million tonnes of wheat to the Pakistan government for the period commencing 1 August 1999 to 31 July 2000. The applicable commission was USD4 per tonne.

That would make a \$4m commission payable on that arrangement, would it not?

A. Yes.

Q. Then if you go over the page, we read, about two-thirds of the way down:

Once the new management took over, the agreement with Pakistan was cancelled. We were informed that [AA6] --

that's the Pakistan agent --

threatened that payments of outstanding receivables from MINFA --

that's the Pakistan government --

to AWB would not continue if the agreement was cancelled.

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We know that, as at December 2000, or at the time the report, at least, which is dated December 2000, was being written the payments were continuing to be made by Pakistan in accordance with a repayment schedule for that million tonnes. Do we know whether or not the payments which were due to the Pakistan agent were ever terminated?

A. Look, my recollection is that they were.

Q. So he was being paid pro rata on tonnage actually delivered to Pakistan, was he?

A. Look, I can't - I can't be sure. I wasn't aware of the detail, but I recall that the arrangements that existed were cancelled by the new management and one of the actions that was put in train was a complete review of how rebates and commissions were paid.

Q. Do you know how much of the \$4m he received?

A. I don't know.

Q. Do you know whether this aspect of the arrangement was ever reported to the board?

A. Look, I don't know.

THE COMMISSIONER: Q. Mr Lindberg, clause 7 would be required only if it could be said that these agency payments were in some fashion illegal and therefore a release was required in relation to them. We do not know whether or not in fact any such agency payments were illegal in any fashion?

A. Mmm-hmm.

Q. Did you understand that, when you approved clause 7, you were agreeing that if in fact such agency payments were illegal, they had, nonetheless, been approved by your board and by you?

A. My understanding, Mr Commissioner, was that, to the extent that any agency payments were not lawful or didn't accord with the policies of the board, then this had no effect, so it was not an attempt to indemnify them, it was something that was wrong - in my mind when I signed them.

Q. It is an acknowledgment that the agency payments were approved by the board and by the chief executive.

A. I think the fact of the matter was I was advised that, yes, agency payments were being made within the business. I didn't have detailed knowledge about the specifics of all

1 those arrangements. I took advice on the matter and, as I
2 recall, the substance of the advice was that this doesn't
3 give people protections from things that weren't in
4 accordance with the policies of the company or breached any
5 law.

6
7 MR AGIUS: Q. Did you appreciate that, in line with that
8 advice, if those payments were illegal, this acknowledgment
9 by the board and by yourself was an acknowledgment that AWB
10 had authorised those illegal payments?

11 A. I don't think I thought about it in that way at that
12 time.

13
14 THE COMMISSIONER: Q. And that the board and the chief
15 executive were complicit in their being made or paid?

16 A. That wasn't my understanding of what was occurring,
17 Mr Commissioner, at the time.

18
19 Q. That's what it says. It says it in plain English?

20 A. That was not what I understood the advice I was
21 receiving was in relation to this release.

22
23 MR AGIUS: Q. You appreciate, don't you, as you read the
24 release today, that what the release says in plain terms is
25 that the board and yourself were acknowledging that the
26 agency payments that were made were authorised payments;
27 that is, authorised by AWB?

28 A. Well, my understanding was that --

29
30 Q. You'll have an opportunity to say that, but my
31 question was: do you appreciate, as you read the release
32 today, that what the release says in plain terms is that
33 the board and yourself were acknowledging that the agency
34 payments that were made were authorised payments; that is,
35 authorised by AWB?

36 A. My understanding is that there were agency payments
37 authorised by the board and chief executive. There may
38 have been other agency payments that weren't, but this
39 covered the ones that were.

40
41 Q. Did you have that understanding at the time, that
42 there were other agency payments that had not been
43 authorised by the board or by yourself?

44 A. Look, I can't recall at the time.

45
46 Q. How does this deed help us to determine whether or not
47 there were unauthorised payments that were made?

1 A. Well, I don't know.

2

3 Q. What some people may find hard to understand,
4 Mr Lindberg - in fairness, I'll give you an opportunity to
5 deal with this - is how could it be that you would have
6 approved this deed without having thought about the matters
7 about which I've just asked you some questions?

8 A. I can only say that, as I recall, I took advice on it.
9 My understanding was that there were agency payments that
10 were authorised. To the extent that there were any, if
11 there were any, this didn't cover them, and I acted on the
12 advice and understanding I had at the time.

13

14 Q. I think you may have said something you didn't intend
15 to. As I have your answer, you say:

16

17 I can only say that, as I recall, I took
18 advice on it. My understanding was that
19 there were agency payments that were
20 authorised. To the extent that there were
21 any, if there were any, this didn't cover
22 them...

23

24 A. Well, "unauthorised" I meant to say in that second
25 bit. That was my understanding.

26

27 THE COMMISSIONER: Q. That can't be, can it? If
28 payments had been authorised by the board and the chief
29 executive, you wouldn't need any acknowledgment of that
30 fact. You only need an acknowledgment in relation to
31 unauthorised payments.

32 A. Well, as I say, I can't - I can't recall the specifics
33 of the advice, but I do have a very clear recollection that
34 there were agency payments that were authorised and that
35 this, I was advised, was appropriate to sign.

36

37 MR AGIUS: Q. This clause also indicates that AWB was
38 acknowledging that authorised agency payments had been made
39 during that time and it indicates that it is acknowledging
40 that by the board and chief executive officer. Does that
41 not make plain that the board was putting its authority
42 behind the acknowledgment?

43 A. Yes.

44

45 Q. Why was that required if agency payments were made in
46 the ordinary course of the conduct of the business of AWB?
47 Why would it be required to have the board's acknowledgment

1 that those sorts of payments were being made?
2 A. Look, I can't recall why it was drawn in this form.
3
4 Q. Before you yourself approved the acknowledgment so
5 far as it related to yourself - in other words, before you
6 acknowledged that AWB had authorised agency
7 payments, particularly during a period when you were not
8 there - would you not have wanted to see chapter and verse
9 that which had been paid which was authorised and that
10 which had been paid which may not have been authorised?
11 A. I can only say I recall that I took advice on the
12 matter from legal, HR and I believe the head of the area
13 and the sum of that advice, to my understanding, was that
14 it was appropriate to approve the release.
15
16 Q. Mr Lindberg, would you dispute a description of you
17 which included the terms "hands-on"?
18 A. Sorry?
19
20 Q. Would you dispute a description of you in the way in
21 which you carried out your work as CEO of AWB that
22 described you as a hands-on person, somebody who was in
23 control and who demonstrated control?
24 A. In some respects, yes; in many respects, no.
25
26 Q. What about in a respect which required you to give
27 your own acknowledgment of circumstances?
28 A. Well, look, I would have - I was very new to the
29 company. I would have asked for matters to be reviewed. I
30 would have acted on the advice that I received.
31
32 Q. Did you discuss with the chairman of the board that
33 these payments had been made to a Pakistan agent?
34 A. Look, I can't recall. I may have. I can't recall.
35
36 Q. If you knew about it, is it the sort of thing you
37 would have discussed with him prior to approving this
38 release?
39 A. Look, I may well have. I wasn't - I don't recall I
40 had any specific agency payments in mind, other than the
41 advice that agency payments had been occurring, and I may
42 well have talked to the chairman about it, I just can't
43 recall.
44
45 Q. Can you recall whether you had a view as to whether or
46 not the agency payments that had been made were legal or
47 illegal?

1 A. Look, I can't recall.
2
3 Q. And you can't recall whether you would have been told
4 that information?
5 A. Well, I didn't have that - that was not - I didn't
6 have - I didn't have a state of mind at that time, I didn't
7 have a state of mind that illegal agency payments were
8 being made.
9
10 Q. Surely AWB would have documented a position in
11 relation to these payments as at July 2000 against the
12 event that the Australian Federal Police came knocking on
13 the door, having interviewed AA1 and AA4?
14 A. Well, I don't know.
15
16 Q. Well, what happens if they come knocking on the door
17 tomorrow?
18 A. Well, all I can say is that the basis upon which
19 agency payments commissions were made were reviewed, they
20 were changed. New procedures and processes were put in
21 place. That is certainly the case.
22
23 Q. The conclusions and recommendations refer to the
24 preparation of a strategy and policy in relation to the
25 Foreign Corrupt Practices Act. Was that done?
26 A. Well, I believe that that was an element that was
27 taken up by legal, yes, I believe it was done.
28
29 Q. Was that strategy and policy put into writing?
30 A. Look, I believe it was in various ways.
31
32 Q. Was it put into practice?
33 A. Well, I believe it was.
34
35 Q. Who had the responsibility to follow up to ensure
36 that, (a), it was in writing and, (b), it was in practice?
37 A. It would have fallen within the responsibility of the
38 line management, with probably overall coordination from
39 legal.
40
41 Q. With some interest from you?
42 A. Yes, I would have relied on them to follow up the
43 recommendations and put things in place.
44
45 Q. Would you have had reports from them from time to time
46 as to how matters were progressing in that regard?
47 A. Look, I may have.

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Q. Wouldn't you have required such things?

A. Look, my understanding is that these matters were attended to.

Q. I don't want to paint you as a person who was standing in your office looking out whilst the AWB burned, Mr Lindberg, but did you not take a personal interest in these matters, given that --

A. I had a million things to deal with. I was brand-new to the company. There were enormous changes occurring at many levels. This was one part - yes, an important part - of the things I had to attend to. I had a million things to do. I relied on the management to follow these through and I remain convinced that we put in place a whole new system of controls, processes, reviews, commissions, rebates, authorisations, reviews of business areas, such as chartering, and so on and so forth. So I believe these matters were attended to.

Q. Do you say that that was the system that failed to reveal to you that the Iraqis had imposed a 10 per cent surcharge on contracts for the sale of wheat to Iraq?

A. Well, I think I have explained in answers to my questions that the state of mind was that the sales to Iraq under the Oil-for-Food Program, in our view, were being superintended and monitored by the United Nations.

Q. Mr Lindberg, we can go over all of this again, but I think you've already acknowledged that the contracts themselves do not indicate anywhere - anywhere at all - that they're the subject of a 10 per cent surcharge, a 10 per cent inflation of the cost of the wheat. I don't think you've ever tried to assert otherwise?

A. No, I agree with that.

Q. And you don't mean to be doing that now?

A. No, I don't.

Q. Did this new system that was introduced after December 2000, following upon the findings and recommendations of the Arthur Andersen team that provided the report, ever reveal that that 10 per cent surcharge was being added to those contracts?

A. Well, obviously it didn't.

Q. What does that tell you about the adequacy of this new

1 system, if one was introduced?

2 A. Well, as I say, I think, with hindsight, no-one
3 appreciated the potential significance of the trucking
4 issue in Iraq at the time.

5
6 Q. Can I take you to two other aspects in the report. At
7 page 0128, at paragraph 3.2, there is a section that deals
8 with concerns as to the extent that AA2 was involved in the
9 negotiation and payment of commissions in Pakistan.

10 A. Mmm-hmm.

11
12 Q. You'll see over the page that the risk ranking was
13 said to be high and that the recommendations included a
14 recommendation to improve communication and coordination
15 between AWB groups, particularly when client issues arise.
16 Do you see that.

17
18 THE COMMISSIONER: Sorry to interrupt you, Mr Agius.

19
20 Q. Mr Lindberg, the answer you just gave was this:

21
22 I think, with hindsight, no-one appreciated
23 the potential significance of the trucking
24 issue in Iraq at the time.

25
26 Does that mean that no-one gave attention to the fact that
27 the trucking fees were increased by a figure equivalent to
28 10 per cent of the contract value?

29 A. Well, I wasn't aware of that.

30
31 Q. That no-one noted that? Someone must have agreed with
32 it. Someone must have authorised payment for it.

33 A. Well --

34
35 Q. You've got a situation where a trucking fee goes from
36 something like US\$25 a tonne to US\$54?

37 A. All I can say, Commissioner, is that certainly my
38 understanding was that that flowed - the trucking fees
39 flowed from the contracts for wheat we had with the IGB.

40
41 Q. But, putting that to one side - even accepting that,
42 which I don't, but if I did - you would then have added to
43 that trucking fee, so-called, a figure equivalent to
44 10 per cent of the contract price for absolutely nothing.
45 How could it not be appreciated?

46 A. As I said in earlier evidence, Commissioner, when we
47 looked at the payments that were authorised it was never

1 characterised in that way - that the fee was a trucking
2 fee.

3

4 Q. It plainly wasn't.

5 A. Well, that's an interpretation that can be put on it
6 now, yes, but that wasn't the state of understanding at the
7 time.

8

9 Q. How could a fee equivalent to 10 per cent of the
10 contract value be added to an existing trucking fee and
11 then be said to be in truth a trucking fee? It's just
12 nonsense?

13 A. I don't know.

14

15 MR AGIUS: Q. Even by the time of December 2000 the AWB
16 was being told by the independent observer,
17 Arthur Andersen, that there had been a recent increase in
18 the trucking cost to \$45 per metric tonne, that that
19 appeared to be high and that there was a risk that this
20 money was being diverted to other purposes, and that there
21 was a risk to AWB of excessive trucking fees. In other
22 words, in the very least, AWB may be paying too much for
23 this service, even if the money isn't being sent elsewhere.
24 Now, you've told us about the system that was introduced to
25 detect these things and to implement the recommendations
26 and findings of the Arthur Andersen report. How could it
27 be that AWB went on paying increases above \$45 per metric
28 tonne in the trucking cost without being aware that at
29 least a component of that, and a very large component of
30 it, was the 10 per cent increase in the contract price?

31 A. Well, I don't know. I believed at the time that the
32 management in the area were dealing with those issues, they
33 were very specific about wheat sales and the things around
34 that, and I believed if there were any issues about
35 trucking post this review then they were being adequately
36 dealt with.

37

38 Q. I'll take you to one more portion of this report
39 before lunch. You'll see it at page 28, barcoded 0134,
40 where Arthur Andersen take the trouble of digesting some of
41 the emails?

42 A. Sorry, Mr Agius, where are we?

43

44 Q. Page 28 of the report, barcode page 0134. About a
45 third of the way down the page there's a reference to an
46 email at 19:03 hours on 30 April 2000 --

47 A. Yes.

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Q. -- where AA3 sent AA1 an email, subject "Iraq"?
A. Mmm-hmm.

Q. Do you see the last sentence in that paragraph:
The rest of the message requested the payment of inland transport charges.

Then Arthur Andersen go on:

We identified that there was an integrity risk evident in these communications. [AA3] expresses concern that the staff may see the contents of the telexes. We are aware of the nature of the Iraq transactions. However, the organisation is required to make and receive payments. Thus a number of persons will naturally need to have the information.

[AA3] stated that these related to two payments made to the shipping companies, one for inland trucking and the other for overseas freight. One payment was made and 10% was for the inland transport. When vessel completed and payment received, the balance of 10% would be paid. This was a very sensitive transaction. That is why we did not want open knowledge it.

Perhaps that should be "open knowledge of it":

He further stated that Chartering have a different Telex system to AWB. IGB (Iraq) had the Chartering telex number and [AA3] was passing the correspondence to International Marketing.

At 0428 hours on 09 May 2000 [AA3] sent email to Simone Jordan of Ronly (blind copy to [AA1]) subject Iraq. He documented in the email that "...invoices for Tse Yu Hong - which not what required." Further, "Essential that invoices to Pac Rim not sent to AWB." This message was then forwarded by [AA1] to Erol Yahya of Ronly

1 with the added text "I am sure I do not
2 need to remind you of the sensitivity of
3 sending the freight invoices to AWB (by
4 mistake no doubt) but with all the book
5 balancing we are doing plus the
6 discretionary payments to our friends in
7 the Middle East we do need to run a very
8 tight admin. If you have any doubts as to
9 the security of what we are doing, I
10 suggest fax the invoices to [AA3]'s
11 home... or mine...

12
13 Then Arthur Andersen continue:

14
15 We acknowledge that the Iraq transactions
16 were conducted in a specific manner.
17 However, we also found that within these
18 transactions were a number of practices
19 that were open to abuse or were created a
20 high degree of fraud and integrity risk.

21
22 Perhaps that should read "or which created a high degree of
23 fraud and integrity risk":

24
25 This email indicates that the invoices were
26 constructed through Ronly and other third
27 parties. The sending of invoices to home
28 addresses to avoid AWB was noted as a red
29 flag. This is usually done for out of
30 hours matters, not due to security issues
31 at the office. Other arrangements at the
32 office can usually be made if the matter is
33 of a sensitive nature, for example a secure
34 fax in the manager's office. The red flag
35 of discretionary payments was one that
36 could not be explained.

37
38 Now, was that portion of the report brought to your
39 attention?

40 A. Look, I can't recall. I have no detailed recollection
41 of this.

42
43 Q. Do you see that AA1, in his email to Ronly, is telling
44 Ronly, "I am sure I do not need to remind you of the
45 sensitivity of sending freight invoices to AWB, but with
46 all the book balancing we are doing, plus the discretionary
47 payments to our friends in the Middle East, we do need to

1 run a very tight admin." This was an email spelt out
2 chapter and verse in the report --

3 A. Mmm-hmm.

4

5 Q. -- which can speak only of an understanding and
6 acknowledgment by AWB employees that AWB was being very
7 careful about which documents it retained in relation to
8 these transactions, that there was careful attention being
9 paid to book balancing in that regard, and that there were
10 discretionary payments being made to friends in the Middle
11 East. Wasn't that brought to your attention?

12 A. I don't believe so.

13

14 Q. What about over the page, Mr Lindberg:

15

16 [AA3] stated that the extra payments were
17 commissions to the best of his knowledge.
18 That the "friend in the Middle East" is
19 probably Zuhair.

20

21 That's the man with whom AWB had been negotiating wheat
22 contracts for aeons and with whom contracts continued to be
23 negotiated until his untimely death in a motor vehicle
24 accident; isn't that right?

25 A. Well, I believe so:

26

27 Zuhair dealt with [AA1]. Zuhair was the
28 one who instructed which trucking company
29 to use. At an airport lounge one time
30 [AA1] received a mobile phone call and said
31 that it had been Zuhair who had asked if
32 extra payments could be made. [AA1] said
33 that he told him that he could not make
34 those payments.

35

36 Doesn't that make plain, Mr Lindberg, that senior staff at
37 AWB were of the view that part of these payments that were
38 being made through Ronly were payments in the nature of
39 commissions to friends in the Middle East which included
40 Zuhair, a person with whom the AWB had been doing business?

41 A. It appears so.

42

43 Q. And the payments that were being made through Ronly
44 were the payments that had been hived off through the
45 contract, being the trucking fees?

46 A. Apparently.

47

1 Q. Yet the AWB continued to negotiate with Zuhair until
2 his retirement and then his death, and it continued to pay
3 trucking fees and aftersales service fees until 2003.

4
5 THE COMMISSIONER: Q. To the company nominated by
6 Zuhair.

7 A. Apparently.

8
9 MR AGIUS: Q. How could it be, if systems were put in
10 place after this report was received in December 2000, that
11 that matter wasn't identified, or, if identified, wasn't
12 corrected?

13 A. Look, I don't know.

14
15 Q. Well, one answer might be that it was approved by AWB
16 because that was the only way the business could be done.
17 Is that the answer?

18 A. Well, I don't have any knowledge of that. I don't
19 know.

20
21 MR AGIUS: Is that a convenient time, Mr Commissioner?

22
23 THE COMMISSIONER: Yes.

24
25 Q. You did tell me yesterday who it was who was charged
26 with implementing these so-called reforms. One was
27 Mr Stott. The other was?

28 A. Mr Goodacre.

29
30 THE COMMISSIONER: Thank you. I'll adjourn until
31 2 o'clock.

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33 LUNCHEON ADJOURNMENT
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UPON RESUMPTION:

MR AGIUS: Q. Mr Lindberg, you may recall that I took you to what became exhibit 56C, which was an email from Dominic Hogan to a number of others, not including yourself, but persons including Mitchell Morison, Al Conway, Sarah Scales, Charles Stott, in which Mr Hogan confirmed the following sale - 300,000 tonnes for shipment between January and March of 2001 - indicating that the trucking cost would be US\$25 and indicating as well that 10 per cent would be added to the price, included into the trucking fee, ie, the IGB will confirm a US dollar price, which I won't read on to the record but we can see on the confidential exhibit:

...and trucking fee will be US\$44.50. This has been approved by the UN as per IGB. I will get this in writing.

Do you remember I had earlier taken you to that exhibit, just to record that that was an email in November 2000 - that is, a month before the Arthur Andersen report - and then exhibit 57C, which is February 2001, reporting on a trip to Iraq by Messrs Hogan and Borlase. The statement in that exhibit regarding trucking fee/services fee is:

The trucking fee is now US\$25 per metric tonne, all governorates of Iraq, with a 10% service fee on the entire FIT value of the contract. We believe the increase in trucking fee and addition of the service charge is a mechanism of extracting more dollars from the escrow account. AWB have agreed to remit the trucking fee in a foreign currency other than US dollars, (most likely DM), in two instalments.

The first instalment was to be US\$14, to be paid prior to the vessel's arriving at Umm Qasr, and the second one within a week of AWB receiving payment from BNP in New York. I think we covered with you the opportunity that was recognised that this gave the AWB to make a margin through Treasury on the foreign exchange hedge.

So, if we put the Arthur Andersen report in chronology, we have in November the negotiation of a

1 contract for delivery in early 2001, where the trucking fee
2 is US\$25 plus 10 per cent of the contract value, which
3 brought us up to nearly US\$45 per tonne. That was
4 in November 2000. Then we have the Arthur Andersen report,
5 which is December 2000, that drew attention to that
6 trucking fee and the possibility that there was a risk that
7 money was being diverted to other purposes, "There may be a
8 risk that AWB is paying excessive trucking fees", and the
9 finding or the statement by AA3 that the extra payments
10 were commissions to the best of his knowledge that the
11 "friend in the Middle East", who was probably Zuhair, who
12 dealt with AA1:

13
14 Zuhair was the one that instructed which
15 trucking company to use. Zuhair had asked
16 if extra payments could be made.
17

18 So that's December 2000. And then, two months later,
19 in February, a trip report from two persons, one of them an
20 experienced contract negotiator, indicating that, in his
21 view, this was an attempt to extract money from the escrow
22 account.

23
24 Seen in its chronology of events, this was a very
25 powerful instrument, this report, wasn't it?

26 A. Sorry, that last bit?

27
28 Q. The report was a very powerful instrument; it
29 reflected, in effect, what had already happened in November
30 and it predicted what was going to be said in February.

31 A. Well, you can interpret it that way, yes.
32

33 Q. If this review process that was put in place following
34 the receipt of this report in December of 2000 was in fact
35 operating, how could it be that nobody in AWB acted upon
36 the observation that Messrs Hogan and Borlase made in
37 their February 2001 trip report?

38 A. I don't know.
39

40 Q. You have given your evidence about your knowledge or
41 lack of knowledge of that trip report, but would not that
42 trip report have gone to the very people who were charged
43 with the responsibility of overseeing the reforms that were
44 to follow the receipt of the Arthur Andersen report?

45 A. Well, I don't know who it went to. It is likely. It
46 is likely, yes.
47

1 Q. It was designed to go to those people, wasn't it?
2 That was the business system.
3 A. I don't know how far up the trip reports went, but
4 certainly they were designed to inform the IS&M team about
5 various markets and what was happening - yes.
6
7 Q. Including the managers of that team?
8 A. Yes.
9
10 Q. Which would at least include Mr Stott?
11 A. Well, one would imagine so, but I'm not - I don't know
12 whether he received it.
13
14 Q. I'm not suggesting --
15 A. No, no.
16
17 Q. I'm not asking you to delve into the unknown, but, in
18 accordance with the business system, one would have
19 expected the managers of that team to have seen it, would
20 one not?
21 A. Presumably so, yes.
22
23 Q. As CEO, you would have been relying upon them to
24 inform themselves as to what was actually going on in these
25 meetings that took place --
26 A. Presumably so, yes.
27
28 Q. -- when your staff travelled to foreign ports to
29 negotiate contracts?
30 A. Yes.
31
32 Q. And you were relying upon them to come to you with
33 important information?
34 A. Yes.
35
36 Q. You were relying upon them to come to you with the
37 important parts of the Arthur Andersen report, if you were
38 too busy doing all the other things you had to do to read
39 it yourself?
40 A. Well, certainly I charged them with the responsibility
41 of implementing things and other things were done, yes.
42
43 Q. And you say that, to the best of your recollection,
44 the portion of the email that I read, and of the trip
45 report, and the portions of the Arthur Andersen report that
46 I have read to you were not read by you?
47 A. That's my recollection.

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Q. And do you say that they were not brought to your attention in the terms in which I read them to you?

A. That's my recollection.

Q. Well, now that you see them in their context, and you look at what was said in the November email, you have read now what was said in the Arthur Andersen report and you have seen it in the context of the February 2001 report, can you say, just with the benefit of hindsight alone, that all of that material ought to have been brought to your attention?

A. I believe, with the benefit of hindsight, yes.

Q. And without the benefit of hindsight, knowing that material as you know it now, do you say that at the time it was your expectation that, if material like that existed, it ought to have been brought to your attention?

A. Yes, if - yes, if people believed it constituted a problem, but not if it didn't in their view.

THE COMMISSIONER: Q. It plainly did constitute a major problem?

A. Well, I think with the benefit of hindsight, yes, but, as I say, I don't know what - I don't know what they understood that to be at the time.

MR AGIUS: Q. There is not much problem understanding what Arthur Andersen was saying about the friends in the Middle East?

A. Yes.

Q. That has alarm bells attached to it, doesn't it?

A. It has risks, yes.

THE COMMISSIONER: Q. The very reason the report was called for was because there was thought to be a problem?

A. Yes.

Q. Any reader of that report would realise there was a problem?

A. Yes.

MR AGIUS: Q. What we understand happened in about the middle of 2000 is that AA1 left, AA3 left --

A. Yes.

1 Q. -- AA4 left?
2 A. Yes.
3
4 Q. These problems had been reported by Arthur Andersen
5 and Messrs Goodacre and Stott were expected to follow up on
6 the report?
7 A. Yes, along with - along with other things that were
8 done.
9
10 Q. What's a ballpark figure that the investigation and
11 report of Arthur Andersen would have cost AWB?
12 A. I don't know.
13
14 Q. No idea?
15 A. No.
16
17 Q. In the hundreds of thousands?
18 A. I would doubt that.
19
20 Q. In the tens of thousands?
21 A. Perhaps.
22
23 Q. To what extent was the report, or the contents of the
24 report, brought to the attention of the board?
25 A. Well, I believe that the knowledge that I had about
26 that report I communicated to the board in various ways.
27
28 Q. That's the knowledge that you had. What about the
29 report itself? Did you see to it that a copy of this
30 report found its way to the board and the board members?
31 A. I don't - I don't know. I don't believe - I don't
32 believe it did.
33
34 Q. Can I ask you why that would be the case, and can
35 I ask you that question against this background: you were
36 the new CEO?
37 A. Mmm-hmm.
38
39 Q. You had only been there since April of 2000?
40 A. Yes.
41
42 Q. As you have told us, it would have been well known
43 that you had an awful lot to do. In that circumstance,
44 would it not have been in your interest to go forward with
45 that report from Arthur Andersen and say, "Look, board,
46 I want you to understand that this is the state of the
47 business as it is at the time that I am taking it over"?

1 A. Well, I - well, perhaps, and, with hindsight, perhaps
2 it should have. I will check, I don't believe it did, but
3 what I do know is that the issues in the report, as
4 I understood them, based on the briefings that I had, were
5 in various ways communicated to the board and various
6 actions were taken. Matters in this report I believe I did
7 discuss with the chairman at the time.

8
9 Q. Is there any document we can go to, is there any
10 record that we can go to which would indicate that which
11 you describe as the issues in the report as you understood
12 them based on the briefings that you had had?

13 A. I don't know. There may be a summary, I just can't
14 recall.

15
16 Q. We have located amongst the documents provided to us
17 by AWB this document, which appears to be a print-out of
18 perhaps a PowerPoint presentation. I will just have some
19 copies of it obtained. We will see if we can bring up a
20 barcoded copy of it. Do you remember seeing such a
21 document? Here is a copy that I can show you. We have a
22 barcoded copy at AWB.0159.0174. This document contains the
23 real names of the persons to whom we have been referring by
24 reference to their "AA" number names, so I won't take you
25 through the document on the screen. Did you see a summary
26 document such as that one?

27 A. Look, I can't be certain, but I believe it is likely
28 that I did. It is probably in the form of the briefing
29 that I received.

30
31 Q. Would you go to the fourth page. Again, I don't want
32 this brought up on the screen. There is a handwritten note
33 there. Is that your handwriting?

34 A. No.

35
36 Q. Were you privy to that information? When I say "privy
37 to that information", I mean, firstly, that the person
38 referred to there had actually worked for Ronly?

39 A. I believe I learnt that at some time after this.

40
41 Q. After the Arthur Andersen report had been received?

42 A. Yes.

43
44 Q. So you didn't know about that before the receipt of
45 the report?

46 A. No, and I believe it was quite some time after, as
47 I recall.

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THE COMMISSIONER: Q. Do you know whose handwriting that is?

A. No, I don't know.

MR AGIUS: Q. When you say "quite some time after", are you talking weeks, months?

A. Oh, I think it would have been many months - quite some time.

Q. I'm not going to name the person, but the note refers to a person having left Ronly "three weeks ago". At the time you first learnt of the information - that is, that that person had actually worked for Ronly at all - was that at a time after the person had left Ronly?

A. I believe so.

Q. A long time after that person had left Ronly?

A. Well, I believe so.

Q. Do you believe that that three-week period that's referred to in the handwritten note refers to approximately three weeks before the end of 2000?

A. I don't know. I don't know.

Q. You can't place when it was, from what you now know, that that person had left Ronly?

A. No. I can't.

MR AGIUS: I tender that document and ask that it be marked as a confidential exhibit, Mr Commissioner.

EXHIBIT #71C SUMMARY DOCUMENT IN RELATION TO ARTHUR ANDERSEN REPORT WITH HANDWRITING, BARCODED AWB. 0159. 0174

MR AGIUS: Q. Can I ask you to look further down that page - this will be the fourth page; that's the page with the handwritten note in the top right-hand corner, barcoded 0177?

A. Mmm-hmm.

Q. It is headed "Concerns in relation to" - the person who we know as AA1, is it not, at the very top of that page?

A. Yes.

Q. And then under the dot point "Ronly" there is a

1 reference to "Iraq inland trucking"?

2 A. Yes.

3

4 Q. Is it likely, then, that you would have been given a
5 review of what it was that Arthur Andersen had reported
6 under that heading in their report?

7 A. I don't - I don't recall that.

8

9 Q. In relation to AA3 you will see, two pages further on,
10 on the barcoded page 0179, there is a reference to
11 "concerns in relation to" AA3. Under the dot point "Ronly"
12 there is a reference to "Iraq trucking company payments".
13 Were you given a briefing in respect of what AA3 had said
14 and what the concerns about him were in relation to the
15 Iraq trucking payments that had been funnelled through
16 Ronly?

17 A. No, I can't recall the specifics of that.

18

19 Q. Under the dot point on that page "disclosure to
20 management", amongst the many things listed there, there is
21 a reference to:

22

23 Pac Rim rebates and no paperwork.

24

25 A. Mmm-hmm.

26

27 Q.

28 Use of dummy invoices - Ronly, Yemen
29 shipping companies?

30

31 A. Mmm-hmm.

32

33 Q.

34 . Faxes to home not to be seen by AWB -
35 Pac Rim Ronly.

36 . Discretionary payments to friends in
37 Middle East.

38

39 A. Mmm-hmm.

40

41 Q. Were you given a briefing in relation to the
42 background behind those dot points?

43 A. Not in a - not, as I recall, in any specific way.
44 There was a general briefing that these were issues and
45 I expected that these issues were being attended to.

46

47 Q. Surely if you had seen anything relating to a concern

1 involving the disclosure to management about the use of
2 dummy invoices or discretionary payments to friends in the
3 Middle East, it would have taken your immediate attention?
4 A. Well, as I say, I believed that the matters that were
5 raised in that report, as I understood them, were being
6 acted upon and there were a range of things that were done
7 progressively to address that.

8

9 Q. I understand that, but that wasn't the point of my
10 question. Surely if you had seen or heard anything in
11 those terms that there were concerns about disclosure to
12 management, which included the use of dummy invoices --

13 A. Mmm-hmm.

14

15 Q. -- and discretionary payments to friends in the Middle
16 East, it would have taken your attention?

17 A. Yes, it would have been an element that I, I believe,
18 would have been acted upon, yes.

19

20 Q. No, taken your attention - that is, you would have
21 read it and been interested in it?

22 A. Well, I would - you know, I believe - I can't recall,
23 but I believe this is likely to be the presentation I got
24 and we would have gone through it and I would have noted
25 that and I would have expected it to be acted upon, yes.

26

27 Q. "Discretionary payments to friends in the Middle
28 East", even without reference to the Arthur Andersen
29 report, would be understood in commercial circles, would it
30 not, as code words for bribes?

31 A. I don't know.

32

33 Q. Well, using all of the acumen that you have gained
34 over the years in your professional life, applying it to
35 the words "discretionary payments to friends in Middle
36 East", don't you come up to the reasonable conclusion that
37 those words at least might relate to the payment of bribes?

38 A. Well, they could be potentially unauthorised payments.

39

40 Q. Isn't that something which would have sent you all
41 abuzz at the end of December 2000?

42 A. Well, as I say, there were many things that were
43 sending me abuzz - this was one. The significance of these
44 issues then had a - was different than it is now, and
45 I believed that the matters in here, as I understood them
46 at the time, were being actioned.

47

1 Q. There are many references in the report, portions of
2 which I read to you today, to "legal" - "consult legal
3 department" or "involve legal department"?

4 A. Mmm-hmm.

5
6 Q. Do you know whether this report was ever passed to
7 Mr Cooper and his legal team?

8 A. Well, I can't say for sure, but it is likely that it
9 was - certainly the substance of the matters, yes.

10
11 Q. Now, we have been through the board minutes that have
12 been kindly provided in relation to this particular matter.
13 If we go to the minutes of the meeting of the board on
14 30 January 2001, which is the first board meeting after the
15 Arthur Andersen report is dated - it is dated December
16 2000 - and that report is AWB.0156.0345, if that can be
17 brought up - we see that that's the front page, minutes of
18 the 34th board meeting on Tuesday, 30 January 2001, by
19 teleconference, and if we go to the next page, 0346, there
20 is a reference in point 5:

21
22 Chief executive's reports.

23
24 And there is a note:

25
26 The board discussed and noted the following
27 reports: Chief Executive's Report; risk
28 management report for the period ending
29 31 December 2000...

30
31 Do you see that?

32 A. Yes.

33
34 Q. Will you accept from me that there's nothing else in
35 the balance of the board minutes that could in any way
36 relate to anything that might have been said about the
37 Arthur Andersen report?

38 A. Look, I just can't recall.

39
40 Q. Just accept that from me. That will be an available
41 inference to be drawn when somebody examines these minutes.

42
43 MR AGIUS: I tender those minutes, Mr Commissioner, and
44 ask that, but for the portions that I have referred to -
45 that is, the front sheet indicating the date and the
46 attendances, and the first portion of paragraph 5 - the
47 document be marked as a confidential exhibit.

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THE COMMISSIONER: Yes.

EXHIBIT #72C MINUTES OF 34TH BOARD MEETING, OF 30/1/2001, BARCODED AWB. 0156. 0345

THE COMMISSIONER: That is confidential save for the page AWB. 0156. 0345 and paragraph 5 on AWB. 0156. 0346.

MR AGIUS: Q. Can I pass you what we have as the CEO report dated 30 January 2001. Can I ask you to look through that document. You will see at the front page it is marked "CEO Report Overview"?

A. Mmm-hmm.

Q. There is a mark in the top right-hand corner "34th Board Meeting, 30 January 2001". Would you agree that this appears to be a copy of the CEO report that you had prepared and provided to the board for that 30 January 2001 meeting?

A. Yes.

Q. Would you agree with me, if you look through that report, that there is no explicit reference to Arthur Andersen or the Arthur Andersen report?

A. Well, not explicitly.

Q. Can you see any other reference to the Arthur Andersen report or the issues raised by it in your 30 January 2001 overview?

A. Well, I can't be sure, but the third dot point up from the bottom talks about "reviewing contracts and contract procedures and international trading division".

Q. That's on page 11, isn't it?

A. Yes.

Q. Under the heading "Legal matters"?

A. Yes.

Q. It reads:

Review of all customer contracts and contract procedures in International Trading Division to minimise the possibility of customer disputes and claims.

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That's the only entry in the whole of that CEO report that provides any opportunity to read in any reference to any issue in the Arthur Andersen report, isn't it?

A. In the written document?

Q. Yes.

A. Yes.

Q. Are you saying you spoke to this written document?

A. Well, the process was that a document was prepared, usually by the divisions, and I would talk to the board about additional matters, and there was also a practice of having director only meetings outside of the board meetings, and various sensitive matters to do with the business were discussed there.

THE COMMISSIONER: Q. What, so that they would not be recorded in the board minutes?

A. No, so that the staff - well, so that the staff weren't present when they were discussed.

MR AGIUS: Q. But you could have a board meeting without having the staff present, could you not?

A. Well, you could, but I'm just telling you what the practice was.

Q. Well, what was the practice in relation to the way in which you informed the board of the Arthur Andersen report? Was it by way of a note in a CEO report which read "review of all customer contracts and contract procedures in international trading division to minimise the possibility of customer disputes and claims", or was it something broader than that?

A. Well, I believe it occurred in a range of ways.

Q. Well, could you assist us? What was the range of ways in which you brought the issues referred to in the Arthur Andersen report to the attention of the board or any individual board members?

A. Well, we put in train a review of commissions and rebates; we instituted further reviews of chartering and freight arrangements; we put in new authorisation and control arrangements; we discussed - I can't remember when - the Ronly joint venture; I talked to the board about the individuals over which we had high risks and the fact that they had now left the business. I talked about the

1 things that we were doing going forward to try and deal
2 with the major issues that had been raised by the report.
3 That's how it was addressed.

4
5 Q. So, did you tell the board of the substance of the
6 matters that I have read to you from the report?

7 A. The detail that you went through in the report?
8 I believe I alerted the board to the issues that that
9 raised as they were communicated, most likely in the
10 summary.

11
12 Q. I thought we had just been through the summary and
13 I had taken you to various dot points --

14 A. Mmm-hmm.

15
16 Q. -- and, in connection with them, I asked you questions
17 about whether you were given, in substance - I don't want
18 to repeat all of my questions --

19 A. Mmm-hmm.

20
21 Q. -- detail relating to the entry "Iraq inland
22 trucking"?

23 A. Yes. Yes.

24
25 Q. Detail in relation to various other entries that
26 I took you to --

27 A. Yes. Yes. Well I --

28
29 Q. -- including "Discretionary payments to friends in the
30 Middle East"?

31 A. Well, my recollection --

32
33 Q. You told me --

34 A. Yes.

35
36 Q. -- just if I could finish, that you weren't given that
37 sort of detail, so how were you able to pass that sort of
38 detail on to the board if you didn't have it?

39 A. I passed the detail of the issues as I understood them
40 about the use of agents, the relationship with Ronly, the
41 need to review contracts, commissions and rebates, the need
42 to change the authorisation arrangements and the need to do
43 a range of other things, and they were - the issues that
44 arose around probity, in general terms, about those two
45 individuals, the fact that they had left the organisation,
46 these matters were canvassed in a range of ways with the
47 board.

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Q. Did you raise with the board the possibility that the payments that were being made to Iraq might have included an amount being a discretionary payment to the chairman of the Iraq Grains Board?

A. I don't believe I did, no. I don't recall that.

Q. Why not?

A. Well, as I say, my understanding of the trucking issue was part of the freight issue, part of chartering, part of the broader Ronly relationship. I didn't focus specifically at that time on that issue and, yes, with hindsight, I mean, didn't appreciate its potential significance, and believed that people who had the carriage of the business were dealing with these issues.

Q. Well, AA3 had left --

A. Yes.

Q. -- the AWB?

A. Mmm-hmm.

Q. But the arrangements of which AA3 had spoken to Arthur Andersen were still in place?

A. Apparently, or --

Q. And continued to remain in place until 2003 - that is, the payment of money back to persons or a person in Iraq?

A. I can only say what I believed. Apparently it did. I believe it was being dealt with.

Q. But do you say, positively, that the reference that we see in your CEO report of 30 January 2001, "Review of all customer contracts and contract procedures of international trading division to minimise the possibility of customer disputes and claims", was meant to flag the findings and issues and recommendations of the Arthur Andersen report?

A. Look, I can't recall the discussion around that item, but it certainly, clearly, wasn't all of the issues, obviously.

MR AGIUS: I tender that CEO report. But for the portions I have read on to the record, might it be marked as a confidential exhibit?

THE COMMISSIONER: Yes, it will be exhibit 73C, save for the portions which have been read.

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EXHIBIT #73C CEO REPORT, PROVIDED AT 34TH BOARD MEETING,
30/1/2001, UNBARCODED

MR AGIUS: Q. Mr Lindberg, in terms of the chronology, what we know would have happened between January and the next board meeting, on 27 February, was the trip report by Mr Hogan and Mr Borlase in which they expressed a view concerning what the Iraqis might have been doing with the imposition of the 10 per cent service fee, including it in trucking?

A. Mmm-hmm.

Q. Extracting money from the escrow account. That was the next thing in the chronology?

A. Mmm-hmm.

Q. And, in respect of that, we have a document which bears upon the issue of whether or not you had notice of that trip report. Could we bring up, please, AWB.5004.0183. This is a copy of an email dated 7 February 2001 --

A. Mmm-hmm.

Q. -- from Mr Borlase, who was, I think, still overseas at that time. It is timed at 2.21am. Amongst the persons to whom it was directed were Dianne Sharpe and Jane Goode, "Subject: Iraq trip report". What relationship was Jane Goode to you within the organisation of AWB Limited?

A. For a short period she was my secretary. She was Murray Rogers' secretary, she was my secretary, and then she was succeeded by Dianne Sharpe.

Q. So this document went to both of Dianne Sharpe and Jane Goode?

A. It seems unlikely that Jane was there at the time.

Q. It is likely, is it, that Dianne Sharpe was your secretary at the time?

A. Yes, by then.

Q. The subject is "Iraq trip report":

Please find below a brief summary of
Dominic Hogan and Darryl Borlase's trip to
Iraq from Jan 31st - Feb 2nd.
If you would like the detailed version then

1 please read the attached file. Dominic is
2 currently travelling and will be in a
3 position to discuss all aspects upon his
4 return to Australia next week.

5
6 It would seem, then, that Dianne Sharpe received this
7 summary of the trip report, together with an electronic
8 copy of the trip report itself, would it not?

9 A. Well, certainly her name is on it.

10
11 Q. Well, let's not get ahead of ourselves. It would seem
12 that this was sent to Dianne Sharpe?

13 A. It would seem.

14
15 Q. And it would seem that she received as well an
16 electronic copy of the trip report?

17 A. It would seem.

18
19 Q. Did she bring it to your attention?

20 A. I don't believe I ever saw that trip report, because
21 it was not - that was not the practice. I think
22 I explained the practice in my office earlier on in
23 evidence.

24
25 Q. What discretion did Ms Sharpe have as to what it was
26 that she showed you and what she didn't? What discretion
27 did you give her?

28 A. Well, I think - actually quite a lot of discretion.
29 I mean, there developed between us an understanding of the
30 things that were important and - that were important and
31 weren't. As I say, some things she would file without me
32 seeing them; some things she would pass on to me. The
33 things that I received, I had a habit almost invariably of
34 initialling.

35
36 Q. So, what, AWB was being run on the basis of what
37 Dianne Sharpe chose to show you and what she didn't?

38 A. Well, I believe there developed an understanding of
39 the important things. There were other mechanisms to deal
40 with the business and the business priorities, not just
41 emails.

42
43 Q. In the modern age, which would include 2001, an email
44 is a convenient way of providing somebody with an
45 electronic copy of a document, is it not?

46 A. Yes, for some.

47

1 Q. In fact, if you happen to be overseas and you have
2 just negotiated a contract, and you have just met with your
3 overseas counterpart, an email is a very efficient way of
4 passing an electronic copy of a document?
5 A. Yes.
6
7 Q. Much more efficient than a fax?
8 A. Perhaps, yes.
9
10 Q. And you still maintain that, although this Iraq trip
11 report was apparently sent to your secretary or your
12 executive assistant, it never found its way to you?
13 A. That's my recollection. I was not in the habit of
14 receiving or reading trip reports. These are operational
15 matters. I did receive certain emails, and that's been
16 traversed, but not trip reports. I would be there all day.
17
18 Q. Surely you would have wanted to see trip reports in
19 relation to a client as important as Iraq, in circumstances
20 where the Iraqis had taken a public position in relation to
21 Australia because of Australia's official position
22 concerning what was happening within Iraq?
23 A. Would you just remind me of the date of that email?
24
25 Q. February 2001?
26 A. I don't believe, as I recall, that the issues that
27 ultimately led to my trip in August 2002 were first raised
28 until about June.
29
30 Q. This report speaks of the Minister of Trade having
31 thought that AWB had snubbed the IGB. It speaks of the IGB
32 having banned all Russian traders?
33 A. Mmm-hmm.
34
35 Q. It speaks of matters which go well beyond just the
36 details of the contract and which go directly to matters of
37 significant concern, does it not?
38 A. Well, there are certainly issues being raised.
39
40 Q. There is intelligence in this email about your
41 competitors - the Russians, the Canadians?
42 A. Yes.
43
44 Q. It deals with a matter of particular concern to the
45 AWB at the time - that of dispatch and demurrage?
46 A. Mmm-hmm.
47

1 Q. Wouldn't you have wanted to be aware of those matters?
2 A. Well, aware generally of those matters through forums
3 such as the corporate risk meetings, as I have explained,
4 and in other ways, and through the board processes and
5 committees, and so on. But I didn't spend all my time
6 reading emails, and certainly not trip reports.

7
8 MR AGIUS: I tender that email and the copy of the trip
9 report which was attached to it. It should be a
10 confidential exhibit.

11
12 EXHIBIT #74C EMAIL FROM DARRYL BORLASE, DATED 7/2/2001,
13 BARCODED AWB. 5004. 0183, AND COPY OF TRIP REPORT

14
15 THE COMMISSIONER: That is confidential save for the
16 portions which have been read on to the record.

17
18 MR AGIUS: Q. If we go to the 27 February 2001 board
19 meeting minutes at AWB. 0156. 0356, this is the minutes of
20 the 35th board meeting conducted on 27 February 2001. The
21 front page lists those who were in attendance. If I take
22 you to page 3, paragraph 6, chief executive's reports, it
23 reads:

24
25 (I) the Chief Executive's reports.
26 The board discussed and noted the following
27 reports: Chief Executive's report; Chief
28 Financial Officer's report for the period
29 ending 31 January 2001...

30
31 And various other reports that are referred to there.
32 Might I take you now to the CEO report which was prepared
33 for that board meeting, which is at AWB. 0156. 0365. Can
34 I take you to 0367. At 0367 there is a reference under
35 "Chartering":

36
37 Chartering is currently in the process of
38 reviewing every component of its business.
39 Integral to this review is a detailed
40 process and procedure audit being conducted
41 by Arthur Andersen and an internal staff
42 capability audit.

43
44 A revised Business Plan, risk reporting
45 framework and legal procedures are also
46 being reviewed and re-developed.

47

1 Is that the item that raises the Arthur Andersen report?
2 A. Well, there was a chartering - a complete chartering
3 review done and audit, and I believe the matters relevant
4 from that report would have been picked up as part of that
5 process.

6

7 Q. Including references to the Iraq trucking fee and
8 payment of discretionary payments to "our friends in the
9 Middle East"?

10 A. I don't know.

11

12 MR AGIUS: I tender the board minutes and ask that they be
13 marked as a confidential exhibit, save for those portions
14 that I have read on to the record.

15

16 THE COMMISSIONER: Yes.

17

18 EXHIBIT #75C MINUTES OF 35TH BOARD MEETING, DATED
19 27/2/2001, BARCODED AWB.0156.0356

20

21 MR AGIUS: I tender the CEO's report of 27 February 2001
22 and ask that it be marked as a confidential exhibit save
23 for the portion that I have read on to the record.

24

25 THE COMMISSIONER: Yes.

26

27 EXHIBIT #76C CEO'S REPORT, DATED 27/2/2001, BARCODED
28 AWB.0156.0365

29

30 MR AGIUS: Q. Could I take you to the only other board
31 minute and CEO report that we have relating to the matter.
32 It is the minutes of the board meeting of 30 May 2001,
33 AWB.0156.0374. You will see on the first page the usual
34 list of directors present and those in attendance. If
35 I take you to page 0375, paragraph 4:

36

37 Chief executive's report.

38

39 The board discussed and noted the following
40 reports: Chief executive's report dated
41 30 May 2000/2001 2nd full year forecast;
42 and the risk management report for the
43 period ending 30 April 2001 and issues and
44 updates arising from these reports as
45 follows...

45

46 And there is noted:

47

1 . Issues arising from the chief executive's
2 report included...

3

4 And you will see in that paragraph a reference to "The
5 chartering business model"; do you see that?

6 A. Yes.

7

8 Q. Then if we go to the next page, page 376, do you see:

9

10 Chartering:

11

12 The board noted that the chartering
13 business model had been reviewed and that,
14 for reasons of transparency and efficiency,
15 chartering no longer provided freight
16 services at a margin to AWB (International)
17 Limited, but that services were now
18 provided in accordance with a fixed rate
19 service fee.

20

21 Do you see that?

22 A. Mmm-hmm. Yes.

23

24 Q. There is no reference at all to any complete review of
25 the processes of chartering or the way in which any of the
26 issues in the AA report had been dealt with?

27 A. Well, they were - in my view, they were picked up as
28 part of that process.

29

30 Q. Even though they are not referred to in the minutes?

31 A. No, because they are just in summary form. There is
32 discussion around those.

33

34 Q. That relates only to one aspect of chartering, and
35 that is the basis upon which chartering had been providing
36 freight services; isn't that right?

37 A. Yes. I agree.

38

39 Q. In relation to transparency and efficiency, the only
40 particular given is that chartering no longer provides
41 freight services at a margin to AWB Limited.

42 A. Mmm.

43

44 Q. Is that right?

45 A. Well, as I say, there was a totally different business
46 model put in place and there were many aspects to it. This
47 is a short-form summary of what occurred and what was

1 occurring.

2

3 Q. So all the reference to reviewing chartering so as to
4 remove opportunity for secret commissions to be paid and
5 material which is referred to in the Arthur Andersen
6 report, all of that material is not recorded in the
7 minutes?

8 A. No, but there is other material. There was a
9 significant review done of the whole process of commissions
10 and rebates. There were significant reviews done of IS&M
11 contract execution. There were significant reviews done of
12 authorisation arrangements. There were significant
13 presentations by the head of IS&M. There was a whole range
14 of things done.

15

16 Q. If your evidence is to be accepted, not one of these
17 significant reviews discovered that the IGB had imposed a
18 10 per cent surcharge on contracts and required the payment
19 of that surcharge to be included in the trucking fee; is
20 that right?

21 A. Well, that clearly wasn't identified as a problem.

22

23 Q. It had been identified as a problem in substance in
24 the Arthur Andersen report when Arthur Andersen had drawn
25 attention to the --

26 A. Yes, yes, well, I believed it had been picked up, but
27 obviously it hadn't.

28

29 Q. Well, you didn't know about it, did you?

30 A. I believed that the matters that were raised in the
31 report were being addressed.

32

33 Q. But you didn't know about it - isn't that your
34 position?

35 A. I knew that there were - I knew that there were issues
36 raised in the report around a range of things. There
37 wasn't a specific state of knowledge on my part. The
38 trucking issue was really a matter for the management to
39 deal with that had the carriage of the operation of the
40 business as part of their ongoing reviews of how that area
41 operated.

42

43 Q. The trucking issue had been raised as one of the
44 methods by which bribes might be being paid to customers of
45 the AWB - the customers being the IGB?

46 A. And I believed that issue was being addressed by the
47 management.

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Q. You believed that without knowing that the issue had been raised in the AA report?

A. Well, I had no reason not to believe that the matter wasn't being progressed.

Q. May we put it another way: you assumed, did you, that management beneath you would adequately deal with what was raised in the Arthur Andersen report without checking that for yourself?

A. I had no reason to believe it wouldn't be.

Q. You assumed it; isn't that right? It doesn't get any better than that, does it, Mr Lindberg?

A. I believed that the matters raised in the report were being actioned and there were a whole range of things done to do that. I believed, in relation to the specifics of IS&M contracts, commissions, rebates, and the like, they were not only being dealt with by the management but by the other processes that were being put in place, including the audit arrangements.

Q. Do you remember yesterday I showed you what became exhibit 67C, which bore your handwriting, "Dominic, a great result! Congratulations, Andrew"?

A. Yes.

Q. Across a printed email from him to you?

A. Yes.

Q. Which included the notation for inland transport at 55.17 to 55.40 Euros per tonne?

A. Yes.

Q. This was dated 21 December 2001?

A. Yes.

Q. This is a year after the Arthur Andersen report?

A. Mmm-hmm.

Q. And the inland trucking component, if one accepts the calculation that's been done, is increased over and above the inland trucking component as it was at the time of the Arthur Andersen report?

A. Mmm-hmm - yes.

Q. Did it not take your attention that, of the total free

1 in truck price, 20 per cent was attributable to inland
2 transport?

3 A. No, I didn't focus on the issue.

4
5 Q. That of the total FOB price nearly a third was
6 attributable to inland transport - in other words, that the
7 inland transport figure was a third of the FOB price?

8 A. No, it didn't take my attention at the time.

9
10 Q. Why not?

11 A. Well, I didn't have any - I didn't focus on it. You
12 know, the general background was I was aware that trucking
13 was occurring. I had been told generally of - I understood
14 the problems that we were experiencing with demurrage and
15 chartering, the shortages of trucks, the problems.
16 Individual components of the contract, and even the
17 contract prices, vary significantly across markets and
18 across times for a whole range of reasons, so I didn't
19 dwell on it. I had no reason to.

20
21 Q. Well, Arthur Andersen had raised the inland trucking
22 component --

23 A. Well, again, I --

24
25 Q. -- as a red-flag issue.

26 A. Well, I believed that was being dealt with, and
27 that --

28
29 Q. And this red flag is now being waved at you violently
30 from Dominic Hogan's email to you?

31 A. Well, I believed that the inland transport issue was
32 being dealt with and the transport was occurring on an
33 appropriate basis. I didn't focus on the individual
34 component parts of the contracts.

35
36 Q. You believed that even though you had been told
37 nothing about the findings of Arthur Andersen in relation
38 to inland transport?

39 A. I believed that the inland transport, as I said
40 previously, contained in the briefing was part of the
41 relationship with Ronly. That had been changed. Other
42 things had happened. I operated on the basis that there
43 were wide-ranging reviews occurring on a whole range of
44 things. We had new management in place at IS&M. There
45 were various changes occurring, there were new procedures,
46 a whole range of things. I had no reason to believe that
47 the inland transport component that was shown there was

1 anything but appropriate.
2
3 Q. Was it that you were turning a blind eye to this
4 deliberately --
5 A. No.
6
7 Q. -- because you knew --
8 A. No.
9
10 Q. -- that, unless the AWB was prepared to pay the inland
11 transport fees, including the service fee, dictated by the
12 Iraqis, there could be no sales of wheat to Iraq?
13 A. I don't agree. The answer is no.
14
15 Q. Will you accept that that was the case?
16 A. The answer is no.
17
18 Q. Will you accept that it was the case that, unless the
19 AWB agreed to pay the inland transport fee and aftersales
20 service fee that was demanded by the Iraqis, the AWB could
21 not sell its grain to Iraq?
22 A. At the time I had no specific knowledge of that. My
23 understanding of the arrangements now, of course, is that -
24 my understanding was that it was required under the
25 contract, and what I was shown was that it was a transport
26 fee, as this indicates, and they were the arrangements
27 required under the contracts.
28
29 Q. Will you accept that it was the case that, unless the
30 AWB agreed to pay the inland transport fee and the
31 aftersales service fee that were demanded by the Iraqis,
32 the AWB could not sell its grain to Iraq?
33 A. Well, I understood that they were the contract
34 requirements. That being so, it probably follows.
35
36 Q. And you knew, didn't you, without going into
37 specifics, that the AWB was obtaining a premium price from
38 the Iraqis?
39 A. I understood that we were achieving a price
40 commensurate with the risks of doing business in that
41 market, and it was acceptable.
42
43 Q. You understood that it was a premium price?
44 A. It was a good price, a price that reflected the risks.
45 It could be good, it could be bad.
46
47 Q. I think you concede it was a good price?

1 A. Well, it varied over time. At many times it cost us -
2 ie, the Australian wheat farmer - a lot of money to do
3 business in that market, because of the problems we
4 experienced.

5
6 Q. You are talking about the \$400m debt that
7 preceded your arrival at the AWB.

8 A. No, no, no, I'm talking about the operational and
9 execution difficulties that I understood and in fact
10 witnessed first hand when I went to Baghdad. I understood
11 the difficulties of doing business in that market.

12
13 Q. Did it ever occur to you that the reason why the
14 Iraqis were prepared to agree to the price - the FOB price,
15 leaving aside trucking and aftersales service fee that the
16 AWB wanted to sell wheat for - was because the AWB was
17 prepared to enter into this agreement to pay the Iraqis the
18 trucking fee and the aftersales service fee?

19 A. That wasn't my understanding at the time.

20
21 Q. Did it ever occur to you that the reason why the AWB
22 was able to secure this business with Iraq was because it
23 was content --

24 A. No.

25
26 Q. -- to permit itself to be a conduit --

27 A. No.

28
29 Q. -- for the Iraqis to have access to their own money
30 which was being held in the escrow account by the UN?

31 A. That wasn't my understanding.

32
33 Q. When you stepped back from this, took a broad view of
34 it in 2000, 2001, 2002, didn't that thought ever cross your
35 mind?

36 A. Well, I didn't specifically turn my mind to it.

37
38 Q. Who told you that all of the issues that were dealt
39 with in the AA report were being adequately addressed?

40 A. Well, it was my belief that they were.

41
42 Q. Yes, but where --

43 A. No-one in particular. I understood that there were a
44 whole range of actions occurring, and I understood that we
45 were in the process of moving to internal auditors -
46 external internal auditors - and we appointed Arthur
47 Andersen, there was an audit plan prepared and there were

1 various measures taken that are there to be seen in the
2 various reviews and changes made, and, on the basis of
3 that, I had no reason to believe that the matters weren't
4 being addressed.

5

6 Q. I just draw your attention, Mr Lindberg, to the CEO's
7 report of 30 May 2001, at AWB.0156.0387. There is a
8 reference in your report under the heading "Chartering".

9 A. Mmm-hmm.

10

11 Q. The first page of this document is AWB.0156.0374, and
12 I want to go to page 0387. Under the heading "Chartering":

13

14 Significant effort is being put into
15 revising all policies and procedures and
16 addressing risks identified in the Arthur
17 Andersen audit report.

18

19 Chartering returned a solid financial
20 performance for April. However, further
21 provisions for incorrect historical debtor
22 posting have been made this month.

23

24 Re-emergence of Iraq as a volume CNF buyer
25 for the fourth quarter has assisted to
26 boost Chartering prospects. The decision
27 by Iraq to not buy grain from Canada has
28 assisted AWB greatly.

29

30 All positions in Chartering have now been
31 filled, and progress is starting to be made
32 on backlog and outstanding issues.

33

34 That was your report to the board concerning the Arthur
35 Andersen report?

36 A. Mmm-hmm.

37

38 Q. What do you say about this observation, that it seems
39 from the way in which all of your reports touching upon
40 this issue dealt with the matter that you saw this as
41 simply being a problem within chartering, and that you
42 didn't see --

43 A. No, I don't agree.

44

45 Q. -- the larger problem?

46 A. I don't agree with that. It was more than just a
47 problem within chartering, because there were other things

1 done. Why review commissions and rebates? Why change IS&M
2 contract arrangements? Why change authorisation
3 arrangements?
4

5 Q. What IS&M contract arguments with Iraq were changed?

6 A. Well, I don't know, but I know there was a review of
7 the contract arrangements done.
8

9 Q. What was the value of that review if in fact the only
10 way the AWB could sell its wheat to Iraq was to agree to
11 paying the trucking fee and the aftersales service fee?

12 A. Well, it was a review of all the contract
13 arrangements. I don't know what bearing, if any, it had on
14 the arrangements that operated in Iraq. I can't recall.
15

16 MR AGIUS: I will tender the board minutes for 30 May
17 2001. I ask that they be marked as a confidential exhibit
18 save for that much of the cover page that relates to
19 identification of them as board minutes, together with the
20 directors present and those in attendance, and those
21 portions that I have read on to the record.
22

23 EXHIBIT #77C MINUTES OF 38TH MEETING OF BOARD,
24 DATED 30/5/2001, BARCODED AWB.0156.0374
25

26 MR AGIUS: I tender the CEO report of 30 May 2001 and ask
27 that it be marked as a confidential exhibit, save for that
28 portion that I have read under the heading "Chartering" on
29 page 0387.
30

31 EXHIBIT #78C CEO REPORT, DATED 30/5/2001, BARCODED
32 AWB.0156.0385
33

34 MR AGIUS: Q. In 2003 the AWB was faced with this
35 position, was it not - and tell me if you can recall this,
36 if you would, Mr Lindberg: it had a ship about to dock or
37 to enter Umm Qasr at the time when the coalition forces
38 began their invasion. That ship was carrying cargo which
39 was referable to one of the 500,000 tonne contracts that
40 had been agreed at the end of 2002; do you recall that
41 general circumstance?

42 A. I recall we were filling contracts, yes.
43

44 Q. And do you recall that you had a ship, I think it was
45 the Fujairah, which had to be diverted to Kuwait?

46 A. I can't recall the specifics, but I know there was a
47 range of issues with vessels and there may have been a

1 diversion. I can't recall the details, but I know there
2 were problems, yes.

3

4 Q. Were you aware that, in respect of that shipment, the
5 AWB paid the first portion of the inland transport fee that
6 had been agreed, which I think was \$14 per metric tonne, so
7 as to permit the ship to dock and discharge, but the ship
8 never had an opportunity to dock and discharge?

9 A. I can't recall that detail.

10

11 Q. Are you aware that the ship was thereafter sent to
12 Kuwait and that the AWB entered into negotiations in an
13 attempt to recoup that portion of the trucking fee that had
14 been paid before the ship had docked?

15 A. I don't recall that. I wasn't aware of that, I don't
16 believe. I can't - I don't have a recollection of that.

17

18 Q. You were very much concerned though, weren't you,
19 about the AWB's position after the invasion began?

20 A. Yes, there were a range of issues.

21

22 Q. And you established a special committee within the AWB
23 to deal with the impact of that invasion on AWB's business?

24 A. There was a - there was such a group, yes.

25

26 Q. There was a real concern, for example, as to whether
27 or not the pre-existing contracts would be honoured by
28 whatever the new regime would be?

29 A. Yes.

30

31 Q. Firstly, by the coalition authority that governed in
32 the interim, and then by the new regime that was to follow
33 that?

34 A. Mmm-hmm, yes.

35

36 Q. Are you aware of negotiations that took place
37 concerning the payment of that inland trucking fee in
38 relation to that shipment that I spoke of?

39 A. No, I can't recall that.

40

41 Q. Could I ask you to look at some documents that were
42 produced overnight and, in particular, a report that was
43 compiled by Messrs Whitwell and Edmonds-Wilson of May 2003.
44 We will need to deal with this in hard copy, because we
45 haven't yet had time to image the documents. I will show
46 you the whole report. I will provide a copy. Do you see
47 that that's a report headed "Jordan/Iran Trip Report",

1 compiled by Messrs Whitwell and Edmonds-Wilson, May 2003?

2 A. Yes.

3

4 Q. If I can take you to that part of it that deals with
5 "Alia for Transportation and General Trade company -
6 Jordan/Iraq"; do you see that?

7 A. Mmm-hmm, yes.

8

9 Q. You will recall, will you, that, in relation to the
10 delivery of wheat after the invasion, AWB was required to
11 take on the responsibility of ensuring that the wheat was
12 delivered to all governorates, and that, to that end, the
13 AWB conducted a number of inquiries with a view to
14 contracting with a transport company to effect the delivery
15 of the wheat; are you aware of that?

16 A. Look, I can't recall the detail of that.

17

18 Q. Were you aware of it? I'm not asking about the
19 detail. I put it to you in very broad terms.

20 A. Just say that again, please?

21

22 Q. Were you aware that, following the invasion, the AWB
23 was required to ensure that the wheat that it delivered to
24 Iraq was delivered to all governorates and, to that end, it
25 had to enter into contractual arrangements with a transport
26 company to ensure that the wheat was delivered?

27 A. Mmm. I mean, I can't recall now.

28

29 Q. This trip report records a meeting with Mr Hussein
30 al-Khawam, the chairman, and Mr Othman al-Absi, the general
31 manager of Alia. Do you see in the portion that I have
32 referred you to there are a number of dot points which
33 relate to detail concerning the apparent delivery of wheat
34 after discharge - do you see that?

35 A. Yes.

36

37 Q.

38 300-500 Alia trucks ready for deployment in
39 Iraq or neighbouring countries. An
40 additional 600 could be available through
41 Alia if and when required (40mt/truck).

42

43 Do you see that?

44 A. Yes.

45

46 Q.

47 Round trip for trucks from

1 Umm Qasr-Baghdad-Umm Qasr takes 4 days.

2

3 And other details of that nature; do you see that?

4 A. Yes.

5

6 Q. It is apparent, isn't it, that your employees were
7 endeavouring to obtain information about what would be
8 required to ensure the delivery of the wheat to the
9 Governorates of Iraq; would you concede that?

10 A. That seems to be the case.

11

12 Q. The last dot point:

13

14 The Chairman told us that he was in almost
15 daily dialogue with Mr Yousif (former IGB
16 DG) --

17

18 that is, Director-General --

19

20 who said they would execute all signed
21 contracts whether under OFF or not. Iraq
22 see sees this as their obligation and do
23 not wish to be hit by the significant
24 claims should they not carry out their
25 signed contracts.

26

27 So the IGB was indicating that they would honour the signed
28 contracts that it had, whether they were under OFF or not;
29 do you see that?

30 A. Yes.

31

32 Q. Then there is talk of what Abdul Rahman's new role as
33 head of Ministry of Trade had involved him in doing,
34 speaking to the US about logistics:

35

36 Alia were looking for the assistance of AWB
37 to keep them as protective agents at Aqaba
38 for incoming Iraqi cargoes.

39

40 Then there is talk about what the chairman of Alia had
41 thought about what Iraq would do for the next two years and
42 what Iraq's position was in relation to self-sufficiency
43 for a number of matters; do you see that?

44 A. Yes.

45

46 Q. Now, I bring you to the last two paragraphs:

47

1 Importantly, the matter of the EUR2.5m
2 inland transport paid for the Motor Vessel
3 Pearl of Fujairah, was brought up with both
4 Othman and the Chairman. Both Othman and
5 the Chairman said the matter had previously
6 been tabled between Alia and Mr Yousif.
7 Alia said that as soon as someone with
8 authority to sign the appropriate
9 documentation from the Iraqi side, the
10 money would be returned to Alia and then to
11 the company in question (this affected
12 about 10 companies other than AWB).

13
14 Alia had the appropriate documentation
15 showing the money had been remitted so we
16 will now have to wait until the hierarchy
17 in Iraq is up and running to chase. The
18 Chairman had much faith and trust that the
19 \$\$ owing would be returned in due course
20 and said he would do everything possible to
21 access the funds from the frozen account
22 asap. Alia had recently sent a letter to
23 Iraq --

24
25 and if we go over the page --

26
27 (around 20/03) re funds that had been paid
28 but services not provided and therefore
29 needed to be returned.

30
31 Action: Remain in regular contact and
32 possibly AL --

33
34 who I take to be you, Mr Lindberg --

35
36 to meet in Jordan.

37
38 A. Sorry, where are you? I have lost it.

39
40 THE COMMISSIONER: Top of the second page. It is on the
41 screen if you don't have it.

42
43 MR AGIUS: Q. Unfortunately the pages of this report are
44 not numbered, but if you start at the beginning of the
45 report, it is pages 4 and 5, and I have read the last two
46 paragraphs on page 4 and the first few lines on page 5?

47 A. Mmm-hmm.

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Q. Have you had an opportunity - have you followed that?

A. Yes.

Q. Do you see the substance of what is being said there by our reporters, Whitwell and Edmonds-Wilson?

A. Yes.

Q. That they were chasing the 2.5 million Euros - which at that time, I might interpolate, was worth about \$4.5m, or thereabouts, Australian - paid - that is, Inland Transport - for the Pearl of Fujairah, but brought that up with both the chairman and general manager of Alia. Both of those gentlemen had said that the matter had been tabled between Alia and Mr Yousif, who was the former Director-General of IGB, and that Alia wanted someone with authority to sign appropriate documentation from the Iraqi side so that the money would be returned to Alia and then to the company in question. Then the second paragraph:

Alia had the appropriate documentation showing the money had been remitted so we will now have to wait until the hierarchy in Iraq is up and running to chase. The Chairman had much faith and trust that the \$\$ owing would be returned in due course and said he would do everything possible to access the funds...

What Alia was saying was, "Yes, we paid that money to the IGB, we are waiting for some form of Iraqi regime to be up and running after this invasion, and when there is someone with authority in the IGB or in Iraq, we will get the money back and we will pay it back to you."

A. Mmm-hmm.

Q. That's the substance of that part of the report, isn't it?

A. Yes.

Q. Isn't that the clearest admission by Alia that the money that it was receiving on account of inland transport was being paid to the IGB?

A. It would appear to be the case.

Q. And that, in order to secure the return of that money, Alia needed to deal with a responsible member of the Iraq

1 regime and that Alia was going to attempt to secure the
2 return of that money from the IGB to the AWB?

3 A. Yes.

4
5 THE COMMISSIONER: Q. What it makes clear is that
6 Messrs Whitwell and Edmonds-Wilson knew, in May 2003, that
7 the payment of trucking fees, in whatever amount, to Alia
8 was simply a front and a method of conduit for that money
9 to Iraq, because when the service of the trucking was not
10 delivered, the money was to be returned by Iraq, not by
11 Alia, and if, in truth, the moneys paid for trucking to
12 Alia had been for trucking by Alia, and the service hadn't
13 been provided, they would simply have had to ask Alia for
14 the money back, not ask Iraq for the money back. That's
15 what it says in black and white, Mr Lindberg, doesn't it?

16 A. It appears so.

17
18 Q. In May 2003.

19
20 MR AGIUS: Q. You saw that report, didn't you,
21 Mr Lindberg?

22 A. I can't - I can't recall seeing it.

23
24 Q. You were still a member of the ELG, were you not?

25 A. Yes.

26
27 Q. Will you have a look at this train of emails that we
28 will put up on the screen?

29 A. Mmm-hmm.

30
31 Q. You will have noted that Mr Whitwell was one of the
32 authors of that report. I will start you at the end of the
33 train. It is an email from Mr Whitwell to Kate Robertson,
34 subject "Iraqi brief plus trip report":

35
36 Kate, can you please send this to ELG
37 members.
38 Thanks.
39 Chris.

40
41 Message from Kate Robertson the next day to Chris Whitwell:

42
43 All sent Chris.

44
45 And then Mr Whitwell's acknowledgment of, "Thank you". So
46 it would seem, Mr Lindberg, that this was sent to ELG
47 members. Now, in the ordinary course, that means that you

1 would have received it, does it not?

2 A. Well, it is likely that it went to my secretary.

3

4 Q. This was sent to you as a member of the ELG, no doubt
5 for discussion at an ELG meeting, and it contained not just
6 the material that I have read to you, but a great deal of
7 material and intelligence relating to the position in
8 Jordan, the position of the ministry in Jordan, a great
9 deal of tactical intelligence. Clearly, it was regarded by
10 those who prepared it as an important document, and,
11 clearly, when one looks at the whole of the document, it
12 contained vital material. Are you going to say that you
13 never saw that document, Mr Lindberg?

14 A. I don't have a recollection of it.

15

16 Q. Are you going to say that you never discussed, at any
17 ELG meeting, the contents of that document?

18 A. Well, we may have, in general terms. It may be that
19 there was a presentation.

20

21 Q. Why would it not be, as it might be in the ordinary
22 commercial world anywhere else in the country --

23 A. Mmm-hmm.

24

25 Q. -- with a document like this which is sent to the CEO
26 who chairs the ELG meeting, that you would see it and read
27 it and discuss it?

28 A. Well, it is not - it doesn't necessarily follow that
29 reports that are prepared are dealt with in that form, or
30 even necessarily read by the ELG. Quite often the authors
31 of a report will come in and give a summary and this will
32 be sufficient to deal with the item.

33

34 Q. What was the item? This report covers so many
35 different matters - what item?

36 A. Well, I don't know.

37

38 Q. You were only the CEO?

39 A. Yes.

40

41 Q. This was, and had been, an extremely important market
42 for the AWB, was it not?

43 A. Yes.

44

45 Q. This was a market that had been put in jeopardy by the
46 invasion and by the position that Australia had taken in
47 relation to that?

1 A. Yes.
2
3 Q. This was a matter of extreme concern to the board of
4 AWB, was it not?
5 A. The general - the general position in the market, yes,
6 of course.
7
8 Q. You had established a special committee of managers
9 within AWB to deal with what was regarded as an emergency
10 situation in Iraq?
11 A. Well, to make sure that the matters were dealt with,
12 yes.
13
14 Q. You would have devoured any intelligence such as what
15 we see in this report in May of 2003, would you not?
16 A. Not necessarily.
17
18 Q. Your eyes would have burnt through it reading it?
19 A. Well, I don't - not necessarily.
20
21 Q. What else was happening in May of 2003 --
22 A. A great many things; a great many things.
23
24 Q. Name one as important as the re-establishment of AWB's
25 commercial arrangements?
26 A. I will name one. We began the process of making an
27 \$825m acquisition, for one.
28
29 Q. When did you begin that?
30 A. It began from late 2002 and culminated in August 2003.
31
32 Q. So you never began it in May of 2003, did you?
33 A. Began it in May of 2003? I said we began in 2002.
34
35 Q. What you said was you began the process in May of
36 2003?
37 A. 2002, and culminated in August 2003.
38
39 THE COMMISSIONER: Q. Mr Lindberg, my concern is a
40 little different. You have agreed with me that the words
41 in the paragraph that were read to you at the bottom of the
42 page and over the page of the trip report --
43 A. Mmm-hmm.
44
45 Q. -- say in terms, and make clear in terms, that the
46 moneys which were paid to Alia for trucking fees were in
47 truth the moneys paid to Iraq, because once the trucking

1 service was not provided, those moneys had to be repaid,
2 they were not repaid by Alia, but repaid by Iraq; correct?
3 A. That seems to be what it is saying.

4
5 Q. That document was circulated to the ELG - the
6 executive leadership group. They are the nine most senior
7 members in AWB; is that right?

8 A. Well, that's in - well, they are, and that was the
9 intention.

10
11 Q. It is yourself, Mr Fuller, Mr Ingleby, Ms Gillingham,
12 Mr Kennedy, Mr Geary, Ms Scales, Mr Stott and Ms Sharpe?

13 A. Mmm-hmm.

14
15 Q. That meant that if any one of those nine people, in
16 truth, read this document, they would have known, in May
17 2003, that the payments of trucking fees to Alia were a
18 conduit for payment of moneys to Iraq. If any one of the
19 nine senior persons had read the document which was sent to
20 them, it would have been impossible for AWB to maintain the
21 position it has since maintained in relation to trucking
22 fees - impossible to maintain it to the Australian
23 Government; impossible to maintain it to the United
24 Nations; and impossible to maintain it to this Commission.

25 A. Mmm. Well, I say my state of knowledge about this was
26 that I didn't have that understanding.

27

28 Q. If any one --

29 A. -- at that time.

30

31 Q. -- of the nine senior members of this organisation had
32 read it, they would have had to have said, when the
33 position was taken by AWB that it had no knowledge that
34 these trucking fees were a device to allow payments to the
35 Iraqi authorities, that that position was a false position
36 on the part of AWB?

37 A. Well, I don't know what they understood by that.

38

39 Q. It is there in black and white. It is not capable of
40 misinterpretation, is it?

41 A. Well, I don't know what they understood by that.

42

43 Q. This document makes plain, as I am presently advised,
44 that the position adopted by AWB publicly for the last two
45 and a half years is simply not tenable.

46 A. Well, that's not what I understood and not what
47 I believe to be the case.

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Q. But if you had read that document it must be so, mustn't it?

A. Well, I don't - well, it depends what people understood by that.

Q. You have told me what you understood by it - twice now?

A. Well, with your assistance.

Q. But I just read the paragraph, Mr Lindberg.

A. I don't know what the - I don't know what that line "and then to the company in question (this affected about 10 companies other than AWB" - what does that mean?

Q. What it plainly means is that AWB was not the only company paying moneys through to the Iraq regime through Alia; there were at least 10 others.

A. Well, that's what it says.

Q. It is, you are right.

MR AGIUS: Q. Mr Lindberg, were you ever concerned to ensure that all of those managers who attended the ELG meeting held the company line about this?

A. No.

Q. That they not disclose that the AWB or any one of them knew that the money that was being paid to Alia on account of inland transport was being passed on to the IGB?

A. No.

Q. Did you do anything to ensure that managers of the AWB did not provide any material or give any evidence which indicated that anybody at AWB was aware that the inland transport fee that was paid to Alia was in fact being paid to the IGB?

A. No.

Q. Not at all?

A. No, not to my knowledge.

Q. Did you put any measures in place in an effort to ensure that managers of the AWB, be they present or past employees, did not provide material or give any evidence which indicated that anybody at the AWB was aware that the inland transport fee was paid to Alia and that it was in

1 fact paid to the IGB?
2 A. Not as I know.
3
4 Q. Have you provided any instructions which might operate
5 as a disincentive to any former or present employee of AWB
6 not to tell the complete truth about the AWB's financial
7 and contractual arrangements --
8 A. No.
9
10 Q. -- with Alia and the IGB?
11 A. No.
12
13 Q. None at all?
14 A. Not to my knowledge.
15
16 Q. Would you have a look at this document, please? This
17 is a copy of a deed --
18 A. Mmm-hmm.
19
20 Q. -- in draft - that is, it is not executed - between
21 AWB Limited on the one hand, and there is a space to
22 include the name of former employees of AWB on the other;
23 do you see that?
24 A. Yes.
25
26 Q. Do you see that it is entitled "Deed relating to legal
27 costs and access to documents in relation to the inquiry
28 established pursuant to Letters Patent dated 10 November
29 2005"?
30 A. Yes.
31
32 Q. And that it is dated 8 December 2005?
33 A. Yes.
34
35 Q. That's this inquiry, isn't it?
36 A. Yes, I understand so.
37
38 Q. Would you go to clause 6.
39 A. Yes.
40
41 Q. This deed was to regulate the offer made by AWB
42 Limited to pay the legal costs of ex-employees of AWB who
43 might be called to give evidence before the inquiry; is
44 that right?
45 A. Well, I believe so.
46
47 Q. Clause 6 reads as follows:

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Obligation to repay costs.
Where the Commissioner makes a material adverse finding in respect of the Former Employee, or a finding that the Former Employee has acted dishonestly or not in good faith, in the report he furnishes to the Governor-General, the Former Employee must repay on demand the amount of any payment made by AWB to the Former Employee pursuant to this Deed.

Do you see that?

A. Yes.

THE COMMISSIONER: Q. You understand what that means, Mr Lindberg?

A. Well, it means you have got to repay the costs if there is an adverse finding.

Q. And if the person told the truth and that resulted in an adverse finding, they would have to repay the costs?

A. On its face, apparently, yes.

MR AGIUS: Q. How could you have approved of such a clause?

A. Well, it is the first time I have seen this document. I understood a deed was being put in place in the normal terms.

Q. This document indicates that it has been prepared by the attorneys who appear for AWB Limited before this inquiry?

A. Apparently, yes.

Q. Are you the person responsible for providing instructions to that firm?

A. It would have come through the legal counsel, Mr Cooper.

Q. Does Mr Cooper provide instructions to Arnold Bloch Leibler on instructions from you?

A. Well, I understood that deeds were being prepared and that they were being dealt with by Mr Cooper and the solicitors. That's as far as my knowledge went about the terms of the deed.

1 Q. Can you see how, plainly, this deed would operate as a
2 disincentive to any former employee?
3 A. Well, I see it is open to that interpretation, but
4 I don't believe that was our intention at all.
5
6 Q. Can you see, if this deed is applied in the terms in
7 which it plainly appears to contain, that if any employee
8 came along to this inquiry and provided material or gave
9 evidence which led to an adverse finding, that evidence
10 being truthful evidence, that AWB knew that the payments it
11 was making to Alia were being paid to the Iraqi regime,
12 that person would then be called upon by AWB to repay any
13 costs that had been advanced by it to support that person's
14 legal costs in appearing before the inquiry; do you see
15 that?
16 A. Well, I see that's the interpretation you are putting
17 on it.
18
19 Q. What other interpretation is available?
20 A. Well, that's not - that's not what was in my mind.
21 That's not intended.
22
23 Q. What was in your mind?
24 A. Well, in my mind was that the normal arrangements
25 should be put in place as to legal costs. I understood
26 that was occurring and I left it to the company's general
27 counsel and the solicitors to do that in the normal course.
28
29 Q. What do you understand by your term "the normal
30 arrangements"?
31 A. Well, whatever the normal arrangements were. I asked
32 that they be done. That's all, nothing more.
33
34 Q. Did it ever occur to you that a clause like this might
35 amount to a contempt of this Commission?
36 A. Well, I don't believe it was ever intended in that
37 way. It is certainly not my intention.
38
39 Q. You can readily understand, though, can't you, how any
40 ex-employee who read clause 6 might take it to mean exactly
41 what I have put to you?
42 A. Well, I say, you know, I don't dispute that it is open
43 to that interpretation, but that's certainly not what was
44 intended as far as I'm concerned.
45
46 Q. Are you going to do anything about withdrawing this
47 document?

1 A. Well, look, I will take advice on that.

2

3 MR JUDD: Commissioner, perhaps we might say something
4 about this document. It is a document, as we understand
5 it, prepared by the solicitors as a form of conventional
6 deed to assist the employees in relation to their legal
7 costs. I think it can fairly be said on their behalf, and
8 on behalf of the legal advisers, that there was no
9 intention whatsoever for such a clause to act as an
10 inducement to anybody to do anything but tell the truth.
11 What such a clause does, in a conventional way, is to
12 address the issues that might arise under the Corporations
13 Act in relation to circumstances where a person might be
14 indemnified in relation to costs.

15

16 In one circumstance one person sought clarification
17 raising such an issue with the solicitors, and it was
18 readily clarified with them that such a clause was not one
19 that was intended or to have any such effect as an
20 inducement upon an employee. Each witness here knows that
21 their obligation is to tell the truth. What that clause
22 was intended to convey is that, in the event that the
23 witness himself or herself has a finding made against them
24 in relation to matters of conduct in the business that
25 might properly exclude them from indemnification under
26 Corporations Law, then such indemnification would cease and
27 the money would have to be returned.

28

29 That was the intention, and if there is any
30 misunderstanding on the part of anybody about that fact -
31 and I understand now that there certainly is on the part of
32 the Commission and my learned friend - it can be raised, it
33 can be addressed, it can be addressed as a legal issue by
34 the legal advisers, and we would be receptive to address
35 that issue in the usual way, but I can assure the
36 Commission there is no such intention on the part of AWB
37 and its legal advisers.

38

39 THE COMMISSIONER: Mr Judd, I accept what you say about
40 your instructions about the intention. I would say no more
41 than I would not regard that clause as a usual clause at
42 all and if the intention is as you have said it is, which
43 I accept, then it is very ill drawn.

44

45 MR JUDD: This is the first time, Commissioner, that a
46 question has arisen from the Commission, apart from one
47 brought to our attention by one of the employees, about the

1 interpretation and the possible effect of that clause.
2 Now, we are grateful for that. It is something which might
3 have been brought to our attention a good deal earlier and
4 may have avoided embarrassment, if that has occurred, in
5 relation to any employee.

6
7 THE COMMISSIONER: Very well.

8
9 MR AGIUS: We hear that, Mr Commissioner, but we are
10 somewhat troubled and we would like to know when it was
11 that that problem was brought to my learned friend's
12 attention and what was done to correct it in relation to
13 any other persons who have received a draft deed in this
14 form. It is not for the officers assisting this Commission
15 to discuss matters of this nature when confronted with a
16 clause which is, in my respectful view, based upon my
17 limited experience of royal commissions and inquiries of
18 this kind, a duty that we ought to undertake, given that
19 this clause is quite unique in my experience.

20
21 Q. Mr Lindberg, are you able to say how many former
22 employees of AWB have received this document in the form in
23 which it currently is?

24 A. I don't know.

25
26 Q. Are you able to say whether any of those former
27 employees of AWB have been approached by AWB seeking to
28 withdraw or modify this document?

29 A. Look, I don't know.

30
31 Q. What is the arrangement that's been made with current
32 employees? Are they subject to a similar clause in their
33 arrangements with AWB concerning any legal assistance that
34 they might be offered by AWB?

35 A. I don't know.

36
37 MR AGIUS: I will tender that draft deed.

38
39 MR JUDD: Could it be marked as a confidential deed but
40 for that clause, Commissioner?

41
42 THE COMMISSIONER: What's confidential about it?

43
44 MR JUDD: The identity of the person.

45
46 THE COMMISSIONER: This is a blank draft.

47

1 MR AGIUS: There is no name of an employee in it, as far
2 as I'm aware.

3

4 MR JUDD: If that be, then so be it.

5

6 EXHIBIT #47 "DRAFT DEED RELATING TO LEGAL COSTS AND ACCESS
7 TO DOCUMENTS IN RELATION TO THE INQUIRY ESTABLISHED
8 PURSUANT TO LETTERS PATENT DATED 10/11/2005"

9

10 MR AGIUS: Mr Commissioner, I had asked Mr Lindberg some
11 questions about a train of emails relating to that trip
12 report concerning a trip to Jordan and Iraq in May of 2003.

13

14 EXHIBIT #48 TRAIN OF EMAILS COMMENCING WITH ONE FROM
15 MR WHITWELL, DATED 16/6/2003 AT 8.13AM, CONCLUDING WITH ONE
16 FROM MR WHITWELL TO MS ROBERTSON, DATED 17/6/2003

17

18 THE COMMISSIONER: I think the trip report also needs to
19 be tendered.

20

21 MR AGIUS: Yes, Commissioner. I tender the trip report
22 and ask that, but for the portion at the beginning
23 indicating its title, the names of the authors and the
24 date, May 2003, and that portion of the report which
25 appears under the heading and which relates to the heading
26 "Alia For Transport and General Trade Company -
27 Jordan/Iraq", the report be marked as a confidential
28 exhibit.

29

30 THE COMMISSIONER: Yes, save for those portions the
31 document will be exhibit 79C.

32

33 EXHIBIT #79C JORDAN/IRAN TRIP REPORT, DATED MAY 2003

34

35 MR AGIUS: Can I indicate that exhibit 48, which is one
36 page - the train of emails - is part of the exhibit 68C,
37 as is the trip report to which we have just referred and
38 which has been marked as has just been indicated, and that,
39 to the extent to which these documents and portions of them
40 have been public documents, they are no longer caught by
41 the confidentiality that attached to them when they formed
42 part of the folder of documents.

43

44 THE COMMISSIONER: Yes.

45

46 MR AGIUS: Mr Commissioner, that is the examination of
47 Mr Lindberg to the point that those assisting you can take

1 it at the moment. We are still digesting a number of
2 documents that we have received of recent times. There are
3 other documents which we understand to be on their way to
4 us. Subject to my learned friend wishing to ask
5 Mr Lindberg any questions at this time, which of course we
6 would not oppose, it would be my application that the
7 examination of Mr Lindberg be stood over to a date to be
8 fixed.

9

10 THE COMMISSIONER: Very well. Mr Dharmananda, would you
11 wish to ask any questions of this witness?

12

13 MR DHARMANANDA: No, Mr Commissioner.

14

15 THE COMMISSIONER: Mr Judd?

16

17 MR JUDD: Not at this time.

18

19 THE COMMISSIONER: Thank you, Mr Lindberg. I will adjourn
20 any further examination of Mr Lindberg to a date to be
21 fixed, should that be necessary, that date to be arranged
22 between solicitors for the Commission and the solicitors
23 for the witness. Is there anything further today?

24

25 MR AGIUS: No, thank you, Mr Commissioner. Might we
26 adjourn in relation to AWB. I can indicate that we will be
27 returning to that matter on Tuesday, and that on Monday we
28 will be dealing with Rhine Ruhr and Alkaloids of Australia
29 on Monday week. We would not be returning to the AWB
30 matter, as presently advised, on Monday. I think that
31 situation is unlikely to change.

32

33 THE COMMISSIONER: Very well. Thank you. I will adjourn
34 until 10am on Monday.

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36 AT 4.10PM THE HEARING WAS ADJOURNED TO
37 MONDAY, 23 JANUARY 2006 AT 10AM

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