

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

Before The Hon TRH Cole AO RFD QC

Held at Level 6, The Family Court of Australia,
97-99 Goulburn Street, Sydney

On Monday, 12 December 2005, at 10am
(Day 1)

1 THE COMMISSIONER: Mr Associate, would you read the
2 Letters Patent, please?

3

4 ELIZABETH THE SECOND, by the Grace of God Queen of
5 Australia and her other Realms and Territories, Head of the
6 Commonwealth:

7

8 TO the Honourable Terence Rhoderic Hudson Cole AO RFD QC

9

10 WHEREAS it is desired to have an inquiry into certain
11 matters relating to decisions or actions of Australian
12 companies mentioned in the Final Report ("Manipulation of
13 the Oil-for-Food Programme By the Iraqi Regime") of the
14 Independent Inquiry Committee into the United Nations
15 Oil-for-Food Programme:

16

17 BY these Letters Patent issued in Our name by Our
18 Governor-General of the Commonwealth of Australia on the
19 advice of the Federal Executive Council and pursuant to the
20 Constitution of the Commonwealth of Australia, the Royal
21 Commissions Act 1902 and other enabling powers, We appoint
22 you to be a Commissioner to inquire into and report on:

23

24 (a) whether any decision, action, conduct,
25 payment or writing of any of the three
26 Australian companies mentioned in the Final
27 Report ("Manipulation of the Oil-for-Food
28 Programme By the Iraqi Regime") of the
29 Independent Inquiry Committee into the
30 United Nations Oil-for-Food Programme, or
31 any person associated with one of those
32 companies, might have constituted a breach
33 of any law of the Commonwealth, a State or
34 Territory; and

35

36 (b) if so, whether the question of criminal
37 or other legal proceedings should be
38 referred to the relevant Commonwealth,
39 State or Territory agency.

40

41 AND We declare that, in these Letters Patent:

42

43 A person is associated with a company if
44 the person is:

45

46 (a) a member, officer (within the meaning
47 of the Corporations Act 2001), employee,

1 agent or adviser of, or a contractor to,
2 the company; or

3
4 (b) another company that is, in relation to
5 the company, a related body corporate or
6 related entity (within the meaning of the
7 Corporations Act 2001); or

8
9 (c) a member, officer (within the meaning
10 of the Corporations Act 2001), employee,
11 agent or adviser of, or a contractor to, a
12 company mentioned in paragraph (b).

13
14 AND We declare that the Commission established by these
15 Letters Patent is a relevant Commission for the purposes of
16 sections 4 and 5 of the Royal Commissions Act 1902

17
18 AND We direct that you conduct your inquiry, to the extent
19 possible, so as to avoid public disclosure of commercially
20 sensitive or confidential material which your inquiry
21 requires to be produced to it.

22
23 AND We require you to begin your inquiry as soon as
24 practicable, to conduct your inquiry as expeditiously as
25 possible, and, not later than 31 March 2006, to furnish to
26 Our Governor-General of the Commonwealth of Australia the
27 report of the results of your inquiry and such
28 recommendations as you consider appropriate.

29
30 WITNESS His Excellency Major General Philip Michael
31 Jeffery, Companion of the Order of Australia, Commander of
32 the Royal Victorian Order, Military Cross, Governor-General
33 of the Commonwealth of Australia.

34
35 Dated 10 November 2005.

36
37 Philip Michael Jeffery
38 Governor-General

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40 EXHIBIT #1 LETTERS PATENT, DATED 10/11/2005

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42 MR AGIUS: Mr Commissioner, on my own behalf, and on
43 behalf of my learned friends Gregory Nell, Michael Wigney
44 and Miles Condon, I seek authorisation to appear before
45 this Commission.

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47 THE COMMISSIONER: Yes, that authorisation is granted.

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MR AGIUS: I tender practice note 1.

THE COMMISSIONER: That will be exhibit 2.

EXHIBIT #2 PRACTICE NOTE 1

MR AGIUS: May it please you.

THE COMMISSIONER: Are there any other applications for leave to appear?

MR JUDD: May it please the Commission, I appear to make application on behalf of the AWB for authorisation to appear in relation to so much of the inquiry as touches upon the AWB, its past and present employees.

THE COMMISSIONER: Thank you, Mr Judd. Application is granted to you and to your solicitors to appear on behalf of AWB Limited in relation to so much of this inquiry as may affect that company. The application is granted on what I shall call the usual terms. The usual terms are as follows: (a), this authorisation to appear may be withdrawn or may be subject to altered or additional limitations or conditions at any time; and, (b), this authorisation to appear entitles the person to whom it is granted to participate in the proceedings of the inquiry subject to the inquiry's control and to such extent as the inquiry considers appropriate. In particular, the inquiry may, (1), limit the particular topics or issues on which the person may examine and cross-examine; (2), impose time limits upon examination and cross-examination; and, (3), require that submissions be presented in writing only.

MR JUDD: May it please the Commission.

MR WINNEKE: May it please the Commission, I seek authorisation to appear on behalf of Rhine Ruhr Pty Limited.

THE COMMISSIONER: Yes, Mr Winneke, leave is granted to you to appear on behalf of Rhine Ruhr Pty Limited in relation to such aspects of this inquiry as may affect that company. The authorisation is granted on the usual terms.

MR WINNEKE: Thank you, sir.

1 MR ROSIER: May it please you, Commissioner, my name is
2 Rosier. I seek authorisation to appear for Alkaloids of
3 Australia Pty Limited. I also seek authorisation for any
4 counsel briefed by me to appear on behalf of that company.

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6 THE COMMISSIONER: Yes, thank you, Mr Rosier.
7 Authorisation is granted to you and to any counsel you may
8 brief to appear on behalf of Alkaloids of Australia Pty
9 Limited in relation to any aspects of this inquiry which
10 might affect that company. The authorisation is granted on
11 the usual terms.

12
13 Is there any comment anyone wishes to make in relation
14 to exhibit 2, which is the practice note?

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16 MR WINNEKE: No, sir.

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18 THE COMMISSIONER: Thank you.

19
20 As the Letters Patent which have recently been read
21 make clear, the purpose and function of this inquiry is to
22 inquire into and report on whether any decision, action,
23 conduct, payment or writing of any of the three Australian
24 companies mentioned in the final report of the Independent
25 Inquiry Committee into the United Nations Oil-for-Food
26 Programme, or of any person associated with those
27 companies, might have constituted a breach of any law of
28 the Commonwealth, a State or Territory, and, if so, to
29 determine whether matters should be referred to the
30 relevant Commonwealth, State or Territory agency.

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32 The three Australian companies mentioned in the
33 committee's final report are:
34 (a) AWB Limited which from 1999, through multiple
35 contracts, sold wheat to the Iraqi Grain Board (IGB) with a
36 face value in excess of US\$1.5 billion;
37 (b) Alkaloids of Australia Pty Limited which by one
38 contract dated 19 July 2001 sold hyoscyne-N-butyl bromide
39 with a face value of US\$836,252.00; and
40 (c) Rhine Ruhr Pty Limited, referred to in the final report
41 as Distall Rhine Ruhr Pty Limited, which by one contract
42 dated 25 October 2001 sold goods with a face value of
43 US\$181,181.00.

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45 By the Letters Patent, I am directed, to the extent
46 possible, to avoid public disclosure of commercially
47 sensitive or confidential material which might be provided

1 to this inquiry. It is my intention to hold the hearings
2 in public, unless confidentiality considerations, or other
3 exigencies, require otherwise.
4

5 Public hearings will commence on Monday, 16 January
6 2006 at hearing rooms on the fifth floor, 55 Market Street,
7 Sydney. At those hearings, it will be the function of
8 counsel assisting the Commission to place before me
9 material relevant to the terms of reference including the
10 circumstances in which the contracts were made and payments
11 made pursuant to those contracts.
12

13 For the purposes of this inquiry it may be important
14 to determine the status of the United Nations resolutions
15 and sanctions under Australian domestic law. An opinion
16 has been sought from Dr James Renwick and Dr Christopher
17 Ward, two respected international lawyers, upon the
18 following matters:

19 (a) What is the status of the United Nations Security
20 Council Resolutions under Australian domestic law?

21 (b) Do United Nations Security Council Resolutions impose
22 civil or criminal responsibilities upon Australian
23 corporations or citizens under Australian domestic law?

24 (c) Were Security Council Resolutions 661 and 986
25 incorporated into Australian domestic law? If so, by what
26 mechanism?

27 (d) By what legal mechanisms did Australia enforce or
28 support the United Nations Security Council Sanctions
29 prohibiting trade, except trade for humanitarian purposes,
30 with Iraq. The opinion will be made public. It will be
31 exhibit 3.
32

33 EXHIBIT #3 LEGAL OPINION SOUGHT FROM DR JAMES RENWICK
34 AND DR CHRISTOPHER WARD
35

36 THE COMMISSIONER: Persons are invited to comment upon it.
37 Those with a different view to that expressed in the
38 opinion should advise the inquiry of their reasons for that
39 different view.
40

41 In addition, this inquiry is at present undertaking a
42 survey of Australian, State and Territory law, including
43 both statute and common law, with a view to identifying
44 aspects of the law which might have application to the
45 circumstances as they are presently understood. Of course,
46 no question of the application of any aspect of the law can
47 be determined until there has been a thorough examination

1 of the factual circumstances, and findings of fact made.

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