

INQUIRY INTO THE CENTENARY HOUSE LEASE

Before The Hon David Hunt AO QC

Held at Level 7, The Family Court of Australia,
97-99 Goulburn Street, Sydney

On Tuesday, 13 July 2004 at 10am

1 THE COMMISSIONER: The Inquiry's Executive Officer will
2 read the Letters Patent.

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4 MS BUTLER: Elizabeth The Second by the Grace of God,
5 Queen of Australia and Her other Realms and Territories,
6 Head of the Commonwealth.

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8 To the Honourable David Anthony Hunt AO QC

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10 Whereas it is desired to have an inquiry into certain
11 matters relating to the leasing by the Commonwealth of
12 accommodation for the Australian National Audit Office in
13 Centenary House at Barton in the Australian Capital
14 Territory (the Centenary House Lease), which was the
15 subject of the Royal Commission of Inquiry conducted by the
16 Honourable Trevor Rees Morling QC in 1994 (the 1994
17 Inquiry):

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19 By these Letters Patent issued in Our name by Our
20 Governor-General of the Commonwealth of Australia on the
21 advice of the Federal Executive Council and pursuant to the
22 Constitution of the Commonwealth of Australia, the Royal
23 Commissions Act 1902 and other enabling powers, We appoint
24 you to be a Commissioner to inquire into and report on the
25 circumstances surrounding the Centenary House Lease.

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27 And in particular, We direct that you inquire into:

- 28
29 (a) whether movements and trends in commercial rates and
30 leasing arrangements since the 1994 Inquiry, or any other
31 matters, cast new light on the findings of that Inquiry;
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33 (b) whether the Centenary House Lease is in line with
34 leasing arrangements, whenever made, of a comparable kind;
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36 (c) whether the terms of reference of the 1994 Inquiry
37 could have been better designed to enable information
38 relevant to the Centenary House Lease to be elicited;
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40 (d) whether the resources provided to the 1994 Inquiry, the
41 absence of counsel assisting, or the particular processes
42 adopted, adversely affected the 1994 Inquiry;
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44 (e) whether Commonwealth agencies gave or received
45 appropriate advice in relation to the Centenary House Lease
46 before it was entered into, including in relation to:
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- 1 (i) the term of the lease;
2 (ii) the effect of the rent escalation
3 provisions in the lease;
4 (iii) whether there was an adequate market
5 review mechanism in the lease;
6 (iv) market conditions; and
7 (v) other relevant matters;

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9 (f) whether, in light of any new information that is
10 elicited, there were payments or inducements offered in
11 relation to the Centenary House Lease which raise issues of
12 impropriety, and whether further examination of witnesses
13 or documents by the 1994 Inquiry may have identified such
14 issues;

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16 (g) whether, in light of any new information that is
17 elicited, any person involved made a misleading statement
18 in relation to the Centenary House Lease or any proposal
19 since 1994 to renegotiate or vary the lease;

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21 (h) whether the government leases referred to in
22 submissions in the 1994 Inquiry, or in the Report of the
23 1994 Inquiry, for the purposes of comparison with the
24 Centenary House Lease provided a reasonable basis of
25 comparison, and whether other leases, including
26 non-government leases, would have provided a more
27 appropriate basis of comparison; and

28
29 (i) whether there exist any other issues of concern in
30 relation to the Centenary House Lease.

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32 And We declare that the Commission established by
33 these Letters Patent is a relevant Commission for the
34 purposes of sections 4 and 5 of the Royal Commissions Act
35 1902.

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37 And We require you to begin your inquiry as soon as
38 practicable, to conduct your inquiry as expeditiously as
39 possible, and, not later than 15 October 2004, to furnish
40 to Our Governor-General of the Commonwealth of Australia
41 the report of the results of your inquiry and such
42 recommendations as you consider appropriate.

43
44 WITNESS His Excellency Major General Philip
45 Michael Jeffery, Companion of the Order of
46 Australia, Commander of the Royal Victorian
47 Order, Military Cross, Governor-General of

1 the Commonwealth of Australia.

2
3 Dated 24 June 2004.

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6 PM Jeffery, Governor-General.

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8 By His Excellency's Command.

9
10 Philip Ruddock, Attorney-General, for the Prime Minister.

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12 THE COMMISSIONER: First I will take the appearances of
13 counsel assisting the inquiry, Mr Foster.

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15 MR L FOSTER SC: If the Inquiry please, I, with
16 Mr Robertson, have been appointed as counsel assisting the
17 inquiry.

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19 THE COMMISSIONER: Thank you. I will come to you in a
20 moment, Mr Higgins.

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22 The purpose of today's preliminary hearing is to hear
23 applications from persons claiming to have a legitimate
24 interest in the subject matters of those terms of reference
25 for leave to appear before the Commission. Persons seeking
26 leave to appear were required to lodge written notice of
27 their intention to apply by fax or post by yesterday. Only
28 one such notice was received within that time; that is from
29 John Curtin House Limited, which is the owner of Centenary
30 House, and the lessor in the relevant lease. That company
31 clearly has a legitimate interest in the terms of reference
32 and leave is granted to that company to appear.

33
34 Mr Higgins, according to your letter, you will be
35 instructing Mr Sackar and Mr Payne for that company?

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37 MR M HIGGINS: That's correct, Mr Commissioner.

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39 THE COMMISSIONER: You have leave to appear.

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41 That only one application has been received was not
42 unexpected. It may be, however, that when notices to
43 produce documents and summonses to give evidence have been
44 served, other persons or companies will claim an interest
45 and seek leave to appear before the Commission. Particular
46 witnesses may also seek leave to be represented. Those
47 will be dealt with if and when the occasion arises.

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The hearing is to take place on level 5, at 55 Market Street. There will be a real time transcript made of the hearing and that transcript, and all exhibits, will be produced in an electronic form, available on the screens in the courtroom network.

The checked and corrected transcript will be available each evening through the e.law organisation, and available that evening on the Inquiry's website. A document has been prepared setting out those arrangements in greater detail and is available from the executive officer at the conclusion of today's hearing.

The published notice of the present hearing indicated that it was planned to commence the hearing itself on Monday, 26 July. The extent of the investigation to date, however, indicates that it will take a little more time than that for us to be in a position to make any meaningful start on that hearing at that time or at a later date.

I hope that a further announcement stating the commencement date can be made shortly. A lot will depend upon the response to the notices to produce presently being prepared.

Now, Mr Higgins, I would like some assistance from you, or from your client, to save us a considerable amount of time. I note from your letter that your client accepts the findings in the report of the previous Inquiry held in 1994. However, rather than rely upon what appears to be a common assumption in that report, that your client is owned in some way by the Australian Labor Party, we would like a chart from you which demonstrates just where the beneficial interest and ownership of that company resides. Would it be possible for you to produce that within a couple of weeks?

MR HIGGINS: I shouldn't see any difficulty in that.

THE COMMISSIONER: No, it is unlikely to be controversial but I think it is better to have some specific information about it, rather than just presume that it is so.

MR HIGGINS: Yes, I think that can certainly be arranged.

THE COMMISSIONER: Thank you very much. Is there anything

1 you want to raise, Mr Foster?

2

3 MR FOSTER: No.

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5 THE COMMISSIONER: Thank you very much for coming. That
6 very short hearing will conclude the present proceedings,
7 and we will resume, hopefully, some time within the month.
8 I will adjourn.

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10 AT 10.10AM THE INQUIRY WAS ADJOURNED TO A DATE TO BE FIXED

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