

COMMISSION OF INQUIRY INTO  
AUGUST 2007 OUTBREAK OF EQUINE INFLUENZA

Before The Hon Ian Callinan AC

Held at Level 5, 55 Market Street, Sydney

On Thursday, 8 November 2007, at 10am  
(Day 2)

1 MR MEAGHER: Commissioner, there are probably two items of  
2 business this morning. The first is to receive further  
3 applications for leave to appear, and then I would outline  
4 shortly how we propose to proceed leading evidence  
5 commencing next Tuesday.

6  
7 THE COMMISSIONER: Thank you, Mr Meagher.

8  
9 I understand that the Equestrian Federation of  
10 Australia Limited wishes to make an application. Is that  
11 correct?

12  
13 MR BANNON: Yes, Commissioner. Bannon is my name.  
14 I appear with Dr Higgins for the Equestrian Federation of  
15 Australia Limited. We seek to make an application for  
16 leave to appear.

17  
18 THE COMMISSIONER: Mr Bannon, I have read your written  
19 material, and it certainly seems to me that you could well  
20 have an interest, and I would give you leave to appear.  
21 You would understand that I am concerned - and I'm not  
22 suggesting that this will occur - to reduce duplication as  
23 much as possible.

24  
25 I think that the EFA is a member of one of the other  
26 organisations that have been given leave. That's correct,  
27 isn't it?

28  
29 MR BANNON: That's correct, the Horse Council.

30  
31 THE COMMISSIONER: You have leave.

32  
33 MR BANNON: Thank you.

34  
35 THE COMMISSIONER: I ask you, as I will ask all parties,  
36 to bear in mind that duplication is to be avoided.

37  
38 MR BANNON: Yes. We don't anticipate having more than an  
39 ad hoc role in matters on which we think we can assist and  
40 matter of particular interest.

41  
42 THE COMMISSIONER: Thank you, Mr Bannon. Further  
43 applications for leave?

44  
45 MR MULLINS: My name is Mullins, initials GR. I am  
46 instructed by Attwood Marshall Lawyers. I seek leave to  
47 appear on behalf of the Master Farriers Association of New

1 South Wales and a number of separate horse transport  
2 companies, being the Sydney Horse Transport, Goldners Horse  
3 Transport, Hawkesbury Racehorse Transport, Prestige  
4 Racehorse Transport, RB Horse Transport Pty Ltd.

5  
6 Commissioner, a submission detailing the interests has  
7 been delivered to the Inquiry dated 7 November 2007.  
8 I have a spare copy of that.

9  
10 THE COMMISSIONER: I have it here, Mr Mullins.  
11 Mr Mullins, I don't see any problem at all about the Master  
12 Farriers Association, nor, indeed, about some of the  
13 transport companies, but I am just not sure at the moment  
14 precisely what interest each of them has, whether they all  
15 have an interest - each of the separate transport  
16 companies.

17  
18 MR MULLINS: The interest that each has will to some  
19 extent depend upon the evidence as it unfolds. We are  
20 cognisant of that, and if the Commission is prepared to  
21 grant leave, we will restrict our cross-examination  
22 accordingly, depending upon the relative interests of each  
23 of the parties.

24  
25 THE COMMISSIONER: Yes, although that really goes without  
26 saying in respect of any party. You have leave,  
27 Mr Mullins.

28  
29 MR MULLINS: Thank you.

30  
31 MR RYAN: May it please the Commission, my name is Ryan  
32 and I appear on behalf of Cologo Bloodstock AG, which  
33 trades as Coolmore Australia. The Commissioner will be  
34 aware that Coolmore Australia is the importer of many of  
35 the horses that are involved in this Inquiry.

36  
37 THE COMMISSIONER: You have leave, Mr Ryan.

38  
39 MR DICK: Robert Dick is my name. I appear for Darley  
40 Australia Pty Ltd, instructed by Phillips Fox. Darley is  
41 in a similar position to that outlined by Mr Ryan.

42  
43 THE COMMISSIONER: Yes, Mr Dick. You have leave.

44  
45 MR CHESHIRE: Commissioner, Anthony Cheshire, seeking  
46 leave on behalf of International Racehorse  
47 Transport Pty Ltd, the Australian importer of a number of

1 these horses. I seek leave on that basis.

2

3 THE COMMISSIONER: Yes, you have leave also.

4

5 MR CHESHIRE: Thank you.

6

7 THE COMMISSIONER: Are there any further applications for  
8 leave?

9

10 MR GRANT: Commissioner, my name is D Grant. I am a  
11 solicitor with Guild Legal. We would seek leave to appear  
12 on behalf of Randwick Equine Centre and the veterinarians  
13 associated with the centre.

14

15 THE COMMISSIONER: You have leave also. Are there any  
16 further applications?

17

18 MR AGIUS: Mr Commissioner, on 3 October 2007, you granted  
19 leave for the State of New South Wales to appear in this  
20 Inquiry. Might I announce my appearance, Mr Commissioner,  
21 with Mr Harvey for the State of New South Wales?

22

23 THE COMMISSIONER: Thank you, Mr Agius.

24

25 MR MacSPORRAN: Mr Commissioner, in similar vein I am  
26 appearing on behalf of the State of Queensland.  
27 I announced my appearance on the first occasion. I appear  
28 today with Mr John Allen.

29

30 THE COMMISSIONER: Thank you, Mr MacSporran. There are no  
31 further applications, then. Yes, Mr Meagher?

32

33 MR MEAGHER: Could I recap briefly - on 3 October  
34 I indicated that it was proposed that public hearings would  
35 commence today. Those hearings will now commence next  
36 Tuesday. The reason for the short delay has been to enable  
37 counsel assisting and the Commission staff to be in  
38 a position to present evidence in a fairly ordered fashion.

39

40 Since 3 October, Inquiry staff have interviewed more  
41 than 150 persons with a view to taking statements or  
42 calling them to give oral evidence and have conducted in  
43 excess of a further 100 interviews for the purpose of  
44 collecting information. We have also issued notices to  
45 produce and some of those are still being responded to, but  
46 in excess of 30,000 documents have already been provided to  
47 the Inquiry.

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Could I indicate what we propose to do next Tuesday. We will first call evidence from Dr James Gilkerson, who is the director of the Equine Infectious Disease Laboratory at the University of Melbourne. We are seeking to obtain from him a written report, and I would hope that we can make that available by close of business tomorrow to the parties who have leave to appear.

The process by which we will do so is to provide material which is not yet in evidence to the parties to whom leave has been granted on a confidential basis so as to enable them to have the material in advance in order to be able to participate in the examination or cross-examination of the witnesses as they are called.

Dr Gilkerson will deal with the nature of the disease, how it is spread, the role that vaccination plays and the ways in which it might be detected. He is not at this stage going to deal with any of the particular blood sample results which have been obtained from the horses in quarantine, nor is he going to deal with the identity of the Australian isolate when compared with currently circulating viruses in Ireland, the United Kingdom and Japan and the United States. The reason for that is that they are still awaiting information with respect to those matters both from overseas authorities and from the laboratories here.

I then propose to call three witnesses from AQIS. The first is Jenni Gordon, who is the executive manager, quarantine with AQIS. She is the principal operating officer responsible for the activities of AQIS. The next person I will call is David Ironside, who is the national manager, live animal imports and post-entry animal quarantine programs of AQIS. Each of those persons operates from Canberra. I then propose to call Julie Sims, who is the assistant regional manager of the AQIS New South Wales office, who is directly responsible for the quarantine activities in New South Wales and specifically the activities of the Eastern Creek Quarantine Station.

I anticipate that we will again have statements from each of those persons. They are being prepared by AQIS, and when they are received, we will similarly make them available to the parties who have leave.

1 I expect that each of those witnesses may be recalled  
2 towards the end of the Inquiry after evidence as to the way  
3 in which matters unfolded has been given in order to put  
4 various matters which are the subject of evidence, so that  
5 the principal purpose for calling these witnesses at this  
6 point in time is to have them identify the structure of  
7 AQIS and explain what the procedures were, how they were  
8 implemented, how they were audited, et cetera.

9

10 THE COMMISSIONER: Mr Meagher, do I understand from what  
11 you are saying in that regard that you are submitting that  
12 it might be more efficient to defer cross-examination on  
13 other aspects of their evidence that may be relevant until  
14 a later stage?

15

16 MR MEAGHER: That is so, Commissioner, at a point in time  
17 when the parties are in possession of a lot of the  
18 information that we have possession of, so that they can  
19 take particular courses with respect to those witnesses.

20

21 It may be that some parties want to cross-examine  
22 shortly on matters which the witness has addressed or  
23 I have examined on which are not clear or they want to take  
24 slightly further. But otherwise, we would expect that  
25 principal cross-examinations might occur later.

26

27 THE COMMISSIONER: Yes.

28

29 MR MEAGHER: Frankly, I'm not quite sure how long that  
30 process will take, that is, the evidence from those four  
31 persons. But when their evidence is completed in the sense  
32 I have described, we then propose to call witnesses from  
33 the importing agents, from the studs - and the studs are  
34 Darley, Coolmore and Arrowfield - from the transport  
35 companies, the grooms - and there are what are described as  
36 professional grooms as well as grooms who work for the  
37 individual studs - the AQIS vets, the manager of Eastern  
38 Creek, the private vets principally from Randwick Equine  
39 Centre, but there are a few others who treated these horses  
40 during the quarantine period, farriers who treated the  
41 horses, who attended on the horses in that period, and  
42 there are two farriers, and some of the other grooms.

43

44 Specifically in relation to witnesses, the early  
45 witnesses will include Julian Cornter who is the Sydney  
46 flight operations manager of International Racehorse  
47 Transport; John Sunderland, the stud manager of Darley Stud

1 Australia; Martin Story, who is the financial controller  
2 for the Arrowfield group. Each of these people attended  
3 the airport when these horses arrived - some once, some  
4 more than once. Mr Adrian O'Brien, who is the assistant  
5 stud manager at Coolmore; and Mr Tom Magnier, who is the  
6 business and racing manager at Coolmore and the son of the  
7 owner of the Coolmore Stud.

8  
9 We will then, as I said, proceed to call other grooms  
10 and persons in the categories I have described. We are as  
11 yet not in a position to advise the precise order.

12  
13 What we will seek to do in relation to each of these  
14 witnesses is, as I said, provide the parties with leave  
15 with a written statement which sets out the substance of  
16 what the witness will say. The statements do not have  
17 documents attached to them, but we will seek to give the  
18 parties a list of the documents and their electronic  
19 identification numbers and, I expect, copies of the  
20 documents, again all on a confidential basis, so that the  
21 parties are in a position to prepare for the witnesses  
22 before they are called.

23  
24 We have also prepared and will tender next Tuesday  
25 summaries in relation to each of the consignments  
26 identifying the persons involved from the air crew forward  
27 to the people who drove the vehicles which took the horses  
28 to Eastern Creek --

29  
30 THE COMMISSIONER: Mr Meagher, again I'm sorry to  
31 interrupt you, but you say that you will provide the  
32 documents to people who might have an interest in them so  
33 that they can prepare their cross-examinations, in effect.  
34 Is that correct?

35  
36 MR MEAGHER: Yes.

37  
38 THE COMMISSIONER: Does that mean that I should make an  
39 order that publication at this stage - it would only be a  
40 temporary order - should be restricted?

41  
42 MR MEAGHER: Certainly. We were going to require the  
43 parties to whom the documents and statements are provided  
44 to give undertakings to the solicitor assisting the  
45 Commission as one form of ensuring confidentiality.  
46 Another would be for you to make a general direction in  
47 respect of documents which answer the description I have

1 gi ven.

2

3 Perhaps I should ask that you do so either now or when  
4 I finish this subject.

5

6 THE COMMISSIONER: All right. You might give some thought  
7 to the form of order, or perhaps one of the counsel  
8 assisting could give thought to the actual form of order.

9

10 MR MEAGHER: I assume from the lack of movement to my  
11 right that that is happening.

12

13 I am not sure if there is much else that I was  
14 actually going to say in relation to how we propose to  
15 proceed. No, there isn't anything else.

16

17 THE COMMISSIONER: Perhaps if I were to make an order  
18 that, subject to any further orders that I might make, the  
19 contents of documents provided to those who have been given  
20 leave to appear are not to be disclosed except to parties  
21 from whom they need to take instructions in respect of that  
22 matter for the purposes of preparation of their  
23 cross-examination, and those persons should similarly be  
24 restricted from disclosing any contents of which they  
25 become aware. That would cover it, Mr Meagher, would it?

26

27 MR MEAGHER: That would cover it, Mr Commissioner.

28

29 THE COMMISSIONER: And I would like to make it clear that  
30 that is a temporary order only and for that limited  
31 purpose, and that as soon as, I would think, those  
32 witnesses commence to give their evidence, those documents  
33 should be generally available. Would that be suitable?

34

35 MR MEAGHER: Yes. As soon as the documents are in  
36 evidence they would be generally available subject only to  
37 questions of confidential confidence.

38

39 THE COMMISSIONER: Yes.

40

41 MR MEAGHER: To take an example, in preparing summaries in  
42 relation to each consignment, we will tender the documents  
43 which establish the matters in the summaries. The  
44 summaries can perhaps be marked in some other way. We will  
45 provide those documents to the parties in advance, and it  
46 may be that some parties seek to protect some commercial  
47 confidences which would otherwise be disclosed by those

1 documents. For example, the documents deal with the  
2 horses, their passports, their health certificates, and  
3 there may be some matters there which parties seek to  
4 justify as commercially sensitive.

5  
6 THE COMMISSIONER: Even the charges might be commercially  
7 sensitive.

8  
9 MR MEAGHER: Possibly.

10  
11 THE COMMISSIONER: Carriers' charges; I don't know.

12  
13 MR MEAGHER: Possibly. So we will seek to make those  
14 documents available before next week also. We will also  
15 tender fairly early on a film, because one of the  
16 consignments was filmed, as well as photographs and  
17 location maps, so that everyone can follow the evidence  
18 that is given by various of the witnesses.

19  
20 Those are the only matters I wish to raise this  
21 morning, Commissioner.

22  
23 THE COMMISSIONER: Thank you, Mr Meagher.

24  
25 For the convenience of people who are present, next  
26 week we intend to sit, if there is evidence available, on  
27 Tuesday, Wednesday, Thursday and Friday, but it may be that  
28 there will have to be some adjustment of hours on Thursday  
29 and Friday. It may be that we will finish a little early  
30 on Thursday - perhaps start earlier and finish a little  
31 earlier - and start a little earlier again on Friday.  
32 Subject to that, I hope they will be full days for each of  
33 Tuesday to Friday inclusive next week.

34  
35 There is nothing further, Mr Meagher?

36  
37 MR MEAGHER: No, Commissioner.

38  
39 THE COMMISSIONER: I will adjourn until Tuesday.

40  
41 AT 10.21AM THE INQUIRY WAS ADJOURNED  
42 TO TUESDAY, 13 NOVEMBER 2007 AT 10.00AM  
43  
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