

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 Wednesday, 3 October 2007, at 10am
(Day 1)

1 THE COMMISSIONER: On 25 of September 2007 I was appointed
2 by the Minister for Agriculture, Fisheries and Forestry
3 under section 66AY of the Quarantine Act 1908 (Cth), to
4 conduct a Commission of Inquiry into the August 2007
5 Outbreak of Equine Influenza in Australia.

6
7 The terms of reference are:

- 8
9 To inquire into and report with respect to:
10 (a) the circumstances that have contributed
11 to the outbreak of equine influenza in
12 Australia; and
13 (b) the need for any strengthened
14 biosecurity procedures for quarantine
15 management of imported horses.

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17 During the course of the Inquiry, I may also inquire
18 into such other matters incidental to those matters as
19 I deem necessary to assist me in considering my report.

20
21 Under section 66AZE of the Quarantine Act 1908 (Cth)
22 most of the provisions of the Royal Commissions Act 1902
23 (Cth) apply to the Inquiry as if the Inquiry were a royal
24 commission.

25
26 On 28 September 2007, the Attorney-General of the
27 Commonwealth signed an instrument under section 6FA of the
28 Royal Commissions Act 1902 appointing Mr Meagher SC,
29 Alister Henskens and Robert Anderson as counsel assisting
30 the Inquiry.

31
32 Investigations into the outbreak of equine influenza
33 are continuing. Persons have been invited today to seek
34 leave to appear before the Inquiry. It occurs to me that
35 it might be better if counsel assisting gave a brief
36 opening of the current situation and what his expectations
37 are before I actually invite the parties to make their
38 applications. I do intend to call upon Mr Meagher first to
39 give that opening and then I will hear applications to
40 participate.

41
42 MR MEAGHER: Thank you, Commissioner. Could I formally
43 announce my appearance with Mr Alister Henskens and
44 Mr Robert Anderson as counsel assisting the Inquiry.

45
46 I do propose to give an opening. I hope it will be
47 brief, but it will set out in some detail the position that

1 the inquiries which have been undertaken so far have
2 reached.

3
4 Before August 2007, Australia was free of equine
5 influenza. That virus, which causes an acute respiratory
6 disease in horses and donkeys, is endemic in Europe, except
7 in Iceland, and endemic in North and South America.
8 Although sporadic outbreaks occur in these areas, they are
9 usually minor, because of the high level of vaccination.
10 However, epidemics do occur when a significantly new strain
11 of the virus emerges. In the past 20 years, epidemics have
12 occurred in South Africa - the most recent in 2003 - India,
13 Hong Kong, Dubai and the Philippines.

14
15 Most of those epidemics have been associated with the
16 import of subclinically infected horses - that means horses
17 which are infected but which show no or very little
18 clinical signs of having been so. The epidemics have been
19 associated with the import of those horses by air and
20 inadequate post-arrival quarantine procedures.

21
22 In the last 10 financial years, the number of live
23 horses imported to Australia has ranged from 362 to 736,
24 and averaged in excess of 500 a year. In the year ended
25 30 June this year, 451 horses were imported. With the
26 exception of horses from New Zealand, those imported for
27 release into the general Australian horse population are
28 required by conditions imposed by their import permits to
29 have been recently vaccinated against equine influenza and
30 to have undertaken a period of pre-entry quarantine. On
31 arrival, they are then required to undertake a further
32 period of post-arrival quarantine, and that quarantine in
33 Australia for horses occurs either at the Eastern Creek
34 Quarantine Station in New South Wales or the Spotswood
35 Quarantine Station on the outskirts of Melbourne.

36
37 Eastern Creek Quarantine Station receives up to
38 14 intakes of imported live horses a year. Each intake is
39 required to spend at least 14 days in post-arrival
40 quarantine. Two of the intakes, scheduled for July
41 and August each year, are restricted, in the sense that no
42 mares are to be included in the intake. That is to enable
43 the import of stallions for the Australian thoroughbred
44 racing breeding season, which runs from September
45 to November.

46
47 This year, the horses for the second of those intakes

1 arrived at Eastern Creek between 3 and 8 August. Those
2 52 horses arrived in six consignments. Two were from the
3 United States, one from the United Kingdom, two from
4 Ireland and one from Japan. The consignment from Japan
5 included nine horses which were offloaded in Melbourne and
6 quarantined at Spotswood. None of those horses appear to
7 have been infected by equine influenza. The remaining four
8 horses on that consignment from Japan were offloaded in
9 Sydney.

10
11 Each of those horses in the various consignments was
12 certified as having been vaccinated against equine
13 influenza in May or June of this year. Most of the horses
14 were "shuttle" stallions destined for the Coolmore or
15 Darley Stud farms in the Hunter Valley in New South Wales.
16 The Coolmore Stud also has farms in Ireland and Kentucky.
17 Some of those horses are extremely valuable, earning
18 service fees which can exceed \$40m a year.

19
20 On 17 August, while in quarantine at Eastern Creek,
21 the Coolmore stallion Encosta de Lago was observed to have
22 an increased temperature, a slight cough and nasal
23 discharge. On 20 August, another Coolmore stallion housed
24 in the stall next to Encosta de Lago, in row E - and that
25 was the stallion Danehill Dancer - was observed to have a
26 slightly elevated temperature and nasal discharge. Over
27 the course of the next few days, other Coolmore horses in
28 the same row of stalls exhibited various of these symptoms.

29
30 On 20 August, nasal swabs were taken from those horses
31 and sent to the CSIRO Australian Animal Health Laboratory
32 at Geelong. On 23 August, five of those horses returned
33 positive results for equine influenza. In addition, blood
34 serum taken from Encosta de Lago on 20 August indicated
35 that the stallion had been infected with equine influenza.

36
37 I should add that on 17 August, an outbreak of equine
38 influenza was confirmed in racehorses in Japan. That
39 outbreak was the subject of a formal report by the Japanese
40 Ministry of Agriculture to the World Organisation for
41 Animal Health, which is known as the OIE, on 28 August.

42
43 If I could then return to the chronology in Australia.
44 On the weekend of 18 and 19 August approximately 215 horses
45 attended an equestrian event which was called "The Ranch
46 Event" at Rutherford Polocrosse Ground and Carroll's Ranch
47 at Anambah near Maitland in New South Wales. Those horses

1 attended the event from various places in New South Wales
2 and southern Queensland.

3

4 During the week following that event, cases of equine
5 influenza were confirmed in horses at a range of locations
6 in New South Wales and Queensland, many of those horses
7 were linked to that event.

8

9 Some of the horses which attended the event returned
10 to Centennial Park Equestrian Centre, which, at that time,
11 housed approximately 199 horses. On 22 August, horses at
12 that centre exhibited clinical symptoms of equine
13 influenza. Eleven horses at Centennial Park were tested on
14 24 August, and on 25 August those tests were confirmed as
15 positive for equine influenza.

16

17 On 25 August, Australia notified the outbreak of
18 equine influenza at Centennial Park to the OIE. Currently,
19 in New South Wales and Queensland, there are estimated to
20 be in excess of 33,000 horses reported as infected with the
21 virus.

22

23 Analyses which have been undertaken to date have
24 established that the virus, using the technical
25 terminology, is an equine influenza virus A subtype 2.
26 Sequence analysis of the virus isolate suggests that it is
27 almost identical to a virus known as the Wisconsin H3N8
28 strain, which was the subject of an outbreak in Wisconsin
29 in the United States in 2003.

30

31 In late September, Commissioner, as you have
32 indicated, the Parliament amended the Quarantine Act 1908
33 to enable the Minister to appoint a person to conduct a
34 commission of inquiry and on 25 September you were
35 appointed by the Minister to inquire into and report with
36 respect to two matters. They are, first, the circumstances
37 that have contributed to the outbreak and, second, the need
38 for any strengthened biosecurity measures for quarantine
39 management of imported horses.

40

41 There are two things that I wish to emphasise at this
42 early stage with respect to your terms of reference. The
43 first is that they are confined to the circumstances
44 contributing to the outbreak of equine influenza. They do
45 not call for or require a general inquiry into the spread
46 of the virus. In the circumstances as currently known, it
47 is likely that you will have to seek to identify the cause

1 of the infection of horses which attended the Carroll's
2 Ranch event, but that you will not be required to consider
3 the spread of the disease beyond horses that attended that
4 event.

5
6 The second matter I wish to emphasise is that whilst
7 your terms of reference require an investigation of the
8 procedures which were or should have been in place to
9 prevent an outbreak and whether any such procedures were
10 followed, they do not require or call for inquiry as to the
11 liability or fault of any person in any legal sense with
12 respect to the outbreak, nor do they require or call for
13 any consideration of any entitlement to compensation or
14 damage as a result of the many and serious and continuing
15 consequences of the outbreak on the Australian horse
16 industry generally.

17
18 You are required to report to the Minister no later
19 than 25 April next year. As the summary which I am about
20 to give will show, there is a necessarily intensive
21 investigation which must be undertaken before the Inquiry
22 is in a position to commence public hearings. Your Inquiry
23 will most economically and efficiently be conducted when
24 the results of those investigations and the relevant
25 documents have been collated and analysed. It is presently
26 proposed that the principal evidence of witnesses will be
27 reduced to writing and that not all witnesses will be
28 presented for cross-examination. Currently, in excess of
29 100 persons have been identified as potential witnesses and
30 interviewed by officers of the Quarantine Service
31 Compliance and Investigation Group. Those officers are
32 working or will, under an arrangement which is currently
33 being made, work under your direction in accordance with
34 your arrangements contemplated by section 66AZ(1)(b) of the
35 Quarantine Act.

36
37 The matters which require further investigation
38 include the following - and I'll list them briefly:

39
40 (a) the circumstances and events with respect to the
41 horses in the six consignments from the commencement of
42 pre-entry quarantine to the confirmation of the presence of
43 equine influenza at Eastern Creek in late August;

44
45 (b) the movement of persons and equipment who or which
46 may have had contact with those horses from their arrival
47 into Australia until the conduct of the event at Maitland

1 on the weekend of 18 and 19 August;

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(c) the procedures, if any, which were in place at various points in relation to the importation and quarantine of those horses and whether those procedures were implemented and their implementation audited;

(d) the analysis of samples taken from the horses to identify, if possible, what is referred to as the index case, which is the first horse in Australia to have contracted the virus;

(e) an analysis of the Australian isolates of the virus to enable comparison of those isolates with those currently circulating strains of the virus in the countries of origin of the imported horses and specifically those currently circulating in Ireland and Japan. That work requires the assistance of various local and overseas authorities and laboratories, including the Animal Health Trust Laboratory at Newmarket in the United Kingdom, which is the leading reference laboratory for equine influenza in the world.

These last two matters in particular require careful and time-consuming testing and analysis, which must be undertaken.

Finally, it will be necessary to investigate the measures currently adopted for the prevention of the importation of infected horses and whether any improved or different measures can and should be adopted.

To assist, Commissioner, in an understanding of those factual and other issues which the Inquiry presently proposes to address, I will give a brief outline of three subjects. They are: first, the nature of equine influenza and how it is spread; second, the government departments and agencies responsible for animal biosecurity in this country; and, third, the sequence of events with respect to the six consignments received into Eastern Creek.

Most of what I propose to say about the nature of equine influenza is not controversial. It is a highly contagious viral disease, which can cause rapidly spreading outbreaks of respiratory disease in horses. As I have said, until August 2007 Australia and New Zealand were the only countries with significant equine industries that

1 remained free of equine influenza.

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The disease is characterised by sudden onset of fever, cough, nasal discharge, laboured breathing and loss of appetite. Infected animals exposed to the virus may not exhibit clinical signs for up to five days after infection. However, an infected horse may start shedding or excreting the virus after two days and be infectious for a period between seven and ten days.

Horses which are partially immune, that is horses which have been previously exposed to the virus or which have been vaccinated, such as should have been the case with the imported horses, can be infected and shed the virus without showing any clinical signs or showing only mild clinical signs. Subclinical infection, as this is referred to, and viral shedding may occur in vaccinated horses where there is a mismatch between the vaccine strain and the strain of virus circulating.

Between horses, transmission of infection occurs principally by aerosol from the virus-laden cough. Thus, in fully susceptible populations, infection can spread rapidly by movement of recently infected horses to and from race meetings, studs, shows, events and sales. Studies suggest that an infected coughing horse can spread the virus 35 metres and possibly further under favourable air and wind drift conditions.

However, although windborne spread is possible and has been reported in studies as having occurred over distances of up to 8 kilometres, the survival of the virus in air depends upon favourable conditions, specifically low relative humidity, lack of sunlight and the volume of virus present.

Contaminated transport vehicles, equipment, grooms, veterinary surgeons, farriers, trainers and other people who have close contact with horses may also be the means of transferring infection between horses. The ability of the virus to survive in water and in dark, moist conditions means that cleaning and disinfection of clothing, horse-harnessing equipment, veterinary and other equipment and vehicles used to transport horses are critically important in preventing mechanical transmission of the virus. None of these matters is controversial and none was not well known to those responsible for regulating and

1 supervising the importation of live horses.

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1 there were 8 horses; the United Kingdom and Ireland - there
2 were 44 horses; and Japan - 4 horses. Each of those horses
3 was required to undergo pre-entry quarantine of between 14
4 and 21 days before arriving in Australia. Prior to that
5 period, each horse was also required to have been
6 vaccinated against equine influenza, and there is no reason
7 why any horse cannot be vaccinated, if required.
8

9 The importation of the horses was arranged by two
10 import agents. They were International Racehorse
11 Transport, a Melbourne-based company which arranged the
12 importation of 49 of the horses which arrived in Sydney;
13 and Crispin Bennett International Horse Transport, which
14 arranged the importation of the remaining three horses.
15

16 Almost all of the horses imported by IRT were imported
17 for the Coolmore or Darley Studs. One of those horses was
18 imported for the Arrowfield Stud. The documentation
19 required to accompany each horse should have included an
20 import permit, an animal passport, health certificates and
21 vaccination records. Each consignment was also accompanied
22 during the air carriage by a number of grooms and, in at
23 least one case, a qualified vet.
24

25 On arrival at Sydney Airport, the air stalls, each
26 containing two or three horses, were unloaded from the
27 freighter aircraft and pulled a short distance to the
28 livestock handling facility, which is a fenced-off area
29 within the airport. There, the horses were unloaded from
30 the air stalls in the presence of an AQIS officer, usually
31 a veterinary officer, and loaded onto trucks for carriage
32 by road to the Eastern Creek Quarantine Station.
33

34 However, there were a number of persons present in
35 addition to AQIS officers whilst the horses were being
36 loaded onto trucks at the livestock handling facility.
37 They included the grooms who had accompanied the horses,
38 the truck drivers, other grooms from the relevant studs
39 meeting the horses at the airport, representatives of IRT
40 and Crispin Bennett, airport ground handling staff,
41 representatives of the studs and owners of the horses and,
42 in one case, a film crew.
43

44 That crew filmed the arrival of a consignment of
45 16 horses on 7 August. Thirteen of those horses were
46 destined for the Darley Stud. We have the film, which will
47 at some stage be put in evidence. It shows the movement of

1 horses at the facility and onto trucks for transport to
2 Eastern Creek. It also shows a number of persons present,
3 most of whom are not wearing protective clothing.
4

5 Investigation to this point in time has revealed a
6 number of issues with respect to the period of pre-entry
7 quarantine, the arrival of horses in Sydney and their
8 loading onto transport for carriage to Eastern Creek. They
9 include the following issues: first, the pre-entry
10 quarantine procedures and whether pre-entry quarantine,
11 which has been conducted at a number of different locations
12 in the various countries of origin, effectively isolated
13 the horses from the risk of disease during that period. In
14 some cases, the quarantine was served at satellite farms of
15 Coolmore Stud in Ireland under supervision of the Irish
16 Department of Agriculture, and that supervision appears to
17 have been ad hoc.
18

19 The next issue is whether each of the horses was
20 effectively vaccinated against equine influenza, as was
21 certified to be the case, and there is an issue about that.
22

23 The next is whether there were any current and
24 documented AQIS procedures detailing what was to happen
25 from the point of arrival of the horses to the time of
26 their arrival at Eastern Creek, and again there are clearly
27 going to be issues about the existence and implementation
28 of such procedures.
29

30 The next is whether the apparently required
31 documentations and certificates were produced for each of
32 the horses, and again there are questions about that.
33

34 Next, there are issues as to whether unauthorised or
35 unnecessary persons were present during the unloading and
36 transfer of the horses to the trucks and whether any of
37 those persons came into contact with the horses.
38

39 The next issue is whether the persons present and
40 handling the horses wore any or sufficient protective
41 clothing and subsequently took any or any adequate
42 decontamination measures.
43

44 There are also issues as to the subsequent movements
45 of the persons present or having contact with the horses
46 and the subsequent movements of any equipment which came
47 into contact with the horses during the course of their

1 unloading.

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An AQIS vet attends the horses within a day or so of their arrival and takes reference blood samples. Otherwise, the welfare and health of the horses is catered to by the grooms, private vets and others, such as farriers and dentists, who attend during the quarantine period. Private caterers also deliver food for the grooms on a daily basis.

Office hours at the quarantine station - and I'm talking about the position before the outbreak - were 8am to 4.30pm Monday to Friday. Prior to the outbreak, there was no after-hours presence at the facility other than for a three-hour period each weekend day to attend to the welfare of cats and dogs housed in the kennels. Also prior to the outbreak, there was no human security presence at the station. Security mainly consisted of reliance on physical measures, such as fencing and locked gates.

Private vets and others who entered the station usually did so after hours and gained entry either with keys and access cards issued to them or by being led in by the grooms. Those vets and others were also able to, and did, drive their vehicles into the equine enclosure and near to the horse stalls.

Facilities were provided for the vets to change into protective clothing and boots. There were also washing and showering facilities in the grooms quarters. However, it would appear that some private vets and others engaged to tend to the horses did so without wearing any protective clothing and without carrying out any decontamination procedures before leaving the quarantine station.

As is plain, there are a number of issues to be investigated in relation to the activities at the quarantine station. They include whether the grooms and others having contact with the horses undertook any adequate biosecurity practices before leaving and when entering the equine enclosure. They include whether protective clothing was worn by private vets and others attending to the horses in the equine enclosure and whether they carried out any decontamination procedures before leaving Eastern Creek.

There also do not appear to be any reliable records kept of access of persons into and out of the equine

1 enclosure. Finally, there are issues as to whether there
2 was any documented and current work instruction as to
3 biosecurity measures which was adopted within the station
4 in the sense that it was being complied with and enforced.
5

6 Now, could I turn to the Carroll's Ranch event,
7 because I want to say something specifically about this
8 event. The extensive and rapid spread of equine influenza
9 among horses which attended the Carroll's Ranch event on 18
10 and 19 August is not consistent with exposure via
11 contaminated equipment or clothing or a transport vehicle.
12

13 The nature of that spread makes it more likely that
14 one or more infectious horses at an early clinical stage of
15 infection was or were present at the event. Assuming that
16 an infected horse was at the Carroll's Ranch event and most
17 likely in the early clinical stage of the disease, that
18 horse would have been exposed to the virus about three to
19 six days previously. A question obviously arises as to how
20 that infection outside the quarantine station was able to
21 occur. I will address the possible scenarios shortly.
22

23 However, with that question in mind, we, meaning those
24 pursuing the investigations and assisting you,
25 Commissioner, want any person to come forward with
26 information if he or she attended that event and observed a
27 coughing horse or any horse with a nasal discharge or if he
28 or she had a horse at the event which had been sick,
29 exhibiting those signs, in the week prior to the event, or
30 whose horse became sick shortly after attending the event.
31

32 We would also like to identify and speak to any vet,
33 farrier or dentist who treated horses that attended that
34 event in the week prior to its occurring.
35

36 Could I now address the possible scenarios with
37 respect to the outbreak. There are a number of scenarios
38 which could explain how the virus was able to enter the
39 general horse population. The principal ones are as
40 follows - and it may be that other scenarios emerge during
41 the course of the Inquiry. First, that the virus was
42 introduced with one or more of the horses imported during
43 the period from 3 to 8 August and then transmitted to
44 Australian horses through indirect contact with persons,
45 equipment or material associated with the air journey or
46 the unloading and transporting of the horses to Eastern
47 Creek - in other words, before the arrival of the horses at

1 Eastern Creek.

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Second, that the virus was introduced in the same way by those horses and then transmitted from Eastern Creek to an Australian horse or horses through indirect contact with persons, equipment or materials associated with managing the horses in Eastern Creek. Those persons obviously would or could include a vet, a farrier, a dentist or a groom who attended to any of the horses in Eastern Creek.

Third, that the virus was present in horses in Eastern Creek at some time before 18 August and horses at nearby premises were infected by airborne spread of the virus from Eastern Creek. Those premises could then have acted as a source of infection for other horses through direct and indirect contacts.

Of these three principal scenarios, present indications are that the third is not likely to have occurred because of weather conditions, specifically humidity, sunlight hours and wind direction, at Eastern Creek during the relevant period.

There are other possible scenarios which do not involve the virus being introduced with those consignments of horses. One is that the virus was introduced by a visitor or returning traveller who had close contact with infected horses overseas through contaminated clothing or horse equipment and infected horses after arriving in Australia. This scenario would also require that person or equipment to have infected the horses within Eastern Creek.

This theory must be significantly discounted, as it is most unlikely that the virus would have survived that air travel and subsequently, so as to infect horses at two different points in time, and particularly horses within Eastern Creek.

Another scenario is that the virus was already present in the quarantine station as a result of some earlier intake of horses and that, due to inadequate immunity post vaccination, some horses in the most recent intake became infected and provided a source of infection which then escaped from Eastern Creek. Again, this scenario must be discounted because it is most unlikely that the virus would have survived for that period.

1 Having said that, the Inquiry approaches its task with
2 an open mind and it may be that parties appearing before
3 you, Commissioner, or we, will identify other possible
4 scenarios.

5
6 Could I now finally turn to the subject of procedural
7 matters. As I indicated at the outset, there are many
8 matters which require further investigation and analysis
9 before we commence public hearings. At the moment, it is
10 proposed that public hearings commence on Thursday,
11 8 November. There would, in my submission, be little
12 utility in convening the Inquiry for any public hearing
13 before that date.

14
15 Commissioner, could I hand up a copy of a proposed
16 practice note, and I will have it distributed among those
17 at the Bar tables.

18
19 HIS HONOUR: Mr Meagher, it might be convenient to read
20 it, do you think?

21
22 MR MEAGHER: I will, if you insist.

23
24 THE COMMISSIONER: I think people would do better if they
25 hear it, perhaps.

26
27 MR MEAGHER: I will do that. It is a practice note which
28 addresses matters such as leave and the way in which oral
29 and written evidence is to be adduced, and I will read the
30 practice note.

31
32 Details of the public hearings of the Inquiry can be
33 obtained by inquiries of the Executive Officer,
34 Graham Millar - his telephone number is given - or by
35 reference to the Inquiry's website. Persons may seek leave
36 to appear before the Inquiry, to the extent of a person's
37 interests. Leave may be withdrawn or made subject to
38 altered or additional limitations or conditions at any time
39 in the discretion of the Commissioner.

40
41 Details of evidence to be adduced at the Inquiry will
42 not be published in advance of any hearing and generally
43 will not be open before it is called.

44
45 Could I observe here that, whilst we don't undertake
46 to give details of the evidence to be adduced, I will
47 attempt to indicate in advance to those who appear before

1 the Inquiry the nature of the evidence which is to be led
2 ahead of the evidence being led. I presently contemplate
3 addressing the factual subjects for inquiry, in a rough
4 chronological sequence, except that we may not deal with
5 the period of pre-entry quarantine first, because of the
6 limited number of witnesses that we presently have access
7 to. But we would contemplate starting with witnesses who
8 were involved in the arrival of the horses at Mascot and
9 then proceed through to their arrival at Eastern Creek and
10 then the period that they were in quarantine.

11
12 If I can return to the practice note. Subject to the
13 control of the Commissioner, counsel assisting will
14 determine which witnesses will be called and documents
15 tendered and the order in which they will be called or
16 tendered. Unless a witness's own representative is
17 permitted to lead his or her evidence, counsel assisting
18 will lead it.

19
20 If reasonably possible, the evidence to be led from a
21 witness should be reduced to writing. Any person wishing
22 to have evidence placed before the Inquiry should notify
23 the Inquiry of the names of the witnesses, outlines of
24 their evidence and copies of documents relevant to and
25 forming part of their evidence.

26
27 Again, I should indicate that we propose to reduce the
28 evidence-in-chief of witnesses to writing. As I said
29 earlier, we may not offer all witnesses for
30 cross-examination. We would offer witnesses for
31 cross-examination if their evidence is likely to be
32 controversial or particular parties have an interest in
33 testing it, but there will be a lot of evidence which will
34 not be controversial, we expect.

35
36 Subject to the control of the Commissioner, any
37 witness who is legally represented and who has been
38 examined by counsel assisting in the Inquiry may next be
39 examined by his own representative and then cross-examined
40 by any person or organisation considered by the Inquiry to
41 have a sufficient interest in doing so. Counsel assisting
42 may then re-examine. Duplication and repetition are to be
43 avoided.

44
45 A copy of any document proposed to be put to a witness
46 in cross-examination should be provided to counsel
47 assisting as soon as possible after a decision is made to

1 use the document for this purpose and prior to its intended
2 use.

3
4 Commissioner, having read the practice note,
5 I formally invite you to issue it.

6
7 THE COMMISSIONER: Yes. I propose to proceed in
8 accordance with it until further notice.

9
10 MR MEAGHER: Finally, a transcript of today's proceedings
11 is being taken and that transcript will be available to the
12 public on the Inquiry's website either later today or soon
13 thereafter. It is proposed that transcripts of each of the
14 Inquiry's public hearings, other than those which are the
15 subject of some confidentiality order, also will be made
16 available on the website, which I will give. It is
17 www.equineinfluencinginquiry.gov.au.

18
19 Finally, updates of information about proposed
20 hearings and other aspects of the conduct of the Inquiry
21 will also be posted to the website. So that should be used
22 as a source of information, particularly in the period
23 before we commence public hearings.

24
25 THE COMMISSIONER: Thank you, Mr Meagher. Would anybody
26 who wishes leave to appear please apply.

27
28 MR ROBERTSON: Commissioner, I, with Mr Andronos,
29 represent the Department of Agriculture, Fisheries and
30 Forestry, and apply in that behalf for leave to appear
31 before the Commission of Inquiry. Commissioner, a letter
32 was sent to the Executive Officer yesterday in accordance
33 with the indication, setting out my client's interest and
34 the broad nature of the relevant evidence that the
35 Department might be able to assist the Inquiry with.
36 I don't know whether you have a copy of that.

37
38 THE COMMISSIONER: Yes, I have seen that, Mr Robertson.
39 Mr Robertson, there is no doubt that you are representing,
40 if I can put it this way, interests who plainly could make
41 a contribution and whose own conduct may be scrutinised.

42
43 MR ROBERTSON: Yes.

44
45 THE COMMISSIONER: It is just the party for whom you are
46 appearing that has got me a little bit puzzled at the
47 moment, because the Department doesn't seem to have any

1 separate legal personality.

2

3 MR ROBERTSON: That is so, and neither does AQIS, in
4 effect.

5

6 THE COMMISSIONER: I was looking at the Act. If you look
7 at Part 2 of the Quarantine Act, which is the part that
8 deals with administration, section 9 provides that the
9 Director of Human Quarantine shall be appointed by the
10 Minister, and section 8B, which seems to be your line of
11 country, I think, states that there shall be a Director of
12 Animal and Plant Quarantine.

13

14 MR ROBERTSON: Who is the secretary of the Department, as
15 I understand it.

16

17 THE COMMISSIONER: I am not too sure that he isn't the
18 person for whom you should seek leave to appear. At the
19 moment, I don't know how I can give leave to somebody who
20 is not a legal personality.

21

22 MR ROBERTSON: The relevant legal personality that we had
23 identified, perhaps mistakenly, was the Commonwealth, in
24 its manifestations.

25

26 THE COMMISSIONER: It may be the Commonwealth. There is
27 no question that you have a right to be here. I am just
28 trying to establish, for present purposes, for whom you
29 should be seen to be appearing. Because, as you would
30 understand, in these inquiries sometimes division starts to
31 occur between offices of a department with different levels
32 of responsibility and authority.

33

34 MR ROBERTSON: Yes. That's a pragmatic question that, if
35 it arises, we will have to deal with.

36

37 THE COMMISSIONER: As and when it arises, yes.

38

39 MR ROBERTSON: My thinking was that the easiest way,
40 perhaps, would be to grant leave to the Commonwealth of
41 Australia as a legal entity to appear, but, lest that be
42 thought to be too wide a proposition, the manifestation of
43 the Commonwealth would be the Department, and I would
44 include in that the secretary, which you identified,
45 Commissioner.

46

47 THE COMMISSIONER: I will grant you leave to appear on

1 behalf of the Commonwealth, but we may have to revisit
2 this.

3

4 MR ROBERTSON: To refine or change it in some way. Yes,
5 I am content with that course.

6

7 MR ROBINSON: If the Commissioner pleases, I appear for the
8 State of New South Wales. We take instructions primarily
9 from the Department of Primary Industries and the Minister
10 responsible for that department.

11

12 THE COMMISSIONER: I wouldn't think there is any doubt
13 that you have an interest and should be granted leave to
14 appear.

15

16 MR ROBINSON: Thank you, Commissioner.

17

18 MR MacSPORRAN: Commissioner, I seek leave to appear on
19 behalf of the State of Queensland. My name is MacSporran,
20 initials AJ. I am instructed by the Crown Solicitor for
21 that State.

22

23 THE COMMISSIONER: Mr MacSporran, it seems to me that you
24 are in much the same position as the State of New South
25 Wales. You also should have leave.

26

27 MR MacSPORRAN: Thank you.

28

29 MR RICH: Mr Commissioner, I seek leave to appear for the
30 Australian Racing Board Limited, Thoroughbred Breeders
31 Australia Limited, Aushorse Limited and the Australian
32 Harness Racing Council Incorporated. Taken together,
33 Mr Commissioner, those entities constitute the peak
34 national bodies charged with representing the interests of
35 the thoroughbred racing industry, the thoroughbred breeders
36 and the harness racing industry in Australia.

37

38 THE COMMISSIONER: Mr Rich, again, it seems to me that you
39 have interests, but they seem to be overlapping interests,
40 perhaps. Do all of the people for whom you seek leave to
41 appear have distinct interests or separate interests?

42

43 MR RICH: Slightly. There is no doubt they have many
44 interests in common, but, for example, there is an obvious
45 difference, in that the thoroughbred racing industry has
46 particular concerns which are not necessarily the concerns
47 of the breeders. So there are some differences. Obviously

1 there are a number of similarities.

2

3 THE COMMISSIONER: Is the Australian Horse Industry
4 Council related to the Australian Racing Board or any of
5 these other organisations for which you seek leave to
6 appear?

7

8 MR RICH: As I understand it, the Australian Racing Board
9 Limited is one of the members of the Australian Horse
10 Industry Council, but that council covers a broader range
11 than the racing industry. So, for example, it also has
12 members who are involved in pony clubs and more
13 recreational horse activities, not confined to racing and
14 particularly not confined to thoroughbred or harness
15 racing.

16

17 THE COMMISSIONER: I think you should have leave to
18 appear, but we may have to be diligent about ensuring that
19 there isn't duplication later, depending upon the
20 participation of other parties.

21

22 MR RICH: Certainly, your Honour. It is intended,
23 Mr Commissioner, that one set of solicitors and counsel
24 would appear on behalf of all of those four entities. It
25 is not anticipated, at the moment, that they would be
26 separately represented.

27

28 THE COMMISSIONER: Very well. You have leave to appear.
29 Are there any other applications?

30

31 DR SHEEHAN: My name is Dr Diane Sheehan. I am the
32 President of the Australian Veterinary Association, which
33 is the peak national body representing veterinarians in
34 Australia. We are seeking leave to appear on behalf of the
35 Australian Veterinary Association, which is the entity that
36 will appear. Our organisation includes Equine
37 Veterinarians of Australia, but they are not a separate
38 entity.

39

40 THE COMMISSIONER: Well, Dr Sheehan, plainly your
41 organisation can make a contribution. It may be that the
42 bigger contribution will be in relation to the second term
43 of reference, but I will give you leave and we can see what
44 degree of participation should follow from that as we
45 proceed, but you have leave.

46

47 MR GIBBONS: Commissioner, my name is Gibbons. I am a

1 solicitor. I am instructed by the Livestock Transport
2 Group. They were the group who were responsible for
3 transporting a number of horses from Mascot to Eastern
4 Creek, and a considerable portion of their business
5 involves the transportation of other thoroughbred horses
6 during this period.

7

8 THE COMMISSIONER: On Mr Meagher's opening, already, it is
9 plain you could have an interest here, so you have leave.

10

11 MR GIBBONS: Thank you, Commissioner.

12

13 MS BARRY: Commissioner, my name is Jane Barry. I seek
14 leave to appear on behalf of the Australian Horse Industry
15 Council. We have forwarded a letter to you, as required
16 under the preliminary notice yesterday. We're the peak
17 body representing the horse industry in Australia. We are
18 a not-for-profit public company which was established to
19 promote the health, safety and welfare of horses within
20 Australia. We have approximately 140 member organisations,
21 which themselves represent over 100,000 participants in the
22 Australian horse industry.

23

24 THE COMMISSIONER: Well, you should have leave. We will
25 just all have to attend to any question as we proceed of
26 duplication, but, subject to that, yes.

27

28 MS BARRY: Thank you.

29

30 THE COMMISSIONER: Are there any further applications? We
31 have received some written applications from natural
32 persons and not organisations, including some
33 veterinarians - indeed, principally veterinarians. It is
34 more likely, I think, that their contribution would be by
35 way of evidence, so I won't deal with their applications
36 finally now, but perhaps I should say that the fate of
37 applications by Dr Mark Schembri, Leigh Coghlan,
38 Robert Steel and Mr Rod Hoare should be postponed. I don't
39 reject their applications to appear at this stage, but nor
40 do I give them leave. However, I will encourage them to
41 remain in contact with counsel and solicitors assisting, so
42 that they can provide such evidence as might be useful to
43 us.

44

45 MR MEAGHER: Commissioner, if I could just say one other
46 thing. I believe that we also received some correspondence
47 from the New South Wales Farmers Association and a body

1 named Animal Health Australia. I would suggest that the
2 applications that they have made, to the extent that they
3 are applications to be given leave, be dealt with by way of
4 correspondence.

5
6 THE COMMISSIONER: Yes. That's a sensible course to
7 adopt. We will be in communication with those applicants
8 whose names Mr Meagher has just mentioned. I certainly
9 don't reject their applications at this stage. Indeed, it
10 seems to me likely that the New South Wales Farmers
11 Association should have leave, but we will deal with those
12 matters and I won't make any determination about them. We
13 will deal with those matters in correspondence.

14
15 MR MEAGHER: Thank you.

16
17 THE COMMISSIONER: There is just one other matter that
18 I want to mention. Mr Meagher has already read out the
19 practice note, which I have adopted. I would just like to
20 draw attention again to paragraph 5 of it, which states:

21
22 Any person wishing to have evidence placed
23 before the Inquiry should notify the
24 Inquiry accordingly. . .

25
26 I would like to make a public appeal to anybody who may
27 have any information that might assist in resolving the
28 questions raised by the terms of reference. I would
29 encourage anybody in that position to contact the
30 solicitors assisting at the website and assist us.

31
32 Is there anything further, Mr Meagher?

33
34 MR MEAGHER: I was going to say two things, Commissioner,
35 because I expect we will be asked these questions. The
36 first is that when we resume a public hearing, hopefully on
37 8 November, the hearing will be in this room and there will
38 be amplification available. At the moment, we don't have
39 amplification. We've only recently been set up, but, as we
40 move forward, we will have amplification. We will resume
41 sittings, I assume, at 10 o'clock on that day, unless we
42 otherwise advise by our website.

43
44 THE COMMISSIONER: Yes. I can see that space is somewhat
45 cramped, particularly, perhaps, for the media. We will try
46 to organise affairs a little better so that there will be
47 more room for you later. We will certainly try to improve

1 the amplification. I am sorry, Mr Meagher was politely
2 telling me to speak up, I think.

3
4 It is our expectation that we will start full public
5 hearings on 8 November, but I won't adjourn formally to
6 that date, because we are not certain of that at this
7 stage. That is our expectation. I will adjourn the public
8 hearing to a date to be fixed and, in the meantime, the
9 investigations to which Mr Meagher referred will be
10 proceeding.

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12 AT 10.58AM THE INQUIRY WAS ADJOURNED ACCORDINGLY
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