

## **EQUINE INFLUENZA INQUIRY**

### **OUTLINE OF SUBMISSIONS**

#### **COOLMORE AUSTRALIA**

##### **Introduction**

1. These submissions respond to the Outline of Submissions prepared by Counsel Assisting the Inquiry [SUBS.INQ.001.0001](the submissions). Coolmore Australia does not intend to deal with all matters raised in the submissions but this should not be taken as an acceptance or endorsement of those matters upon which it does not choose to put submissions.
2. Coolmore reserves the right to seek leave to put in further written material should this be necessary to deal with any matters relating to Coolmore raised by other parties' submissions.

##### **Section 1 – Background**

3. Coolmore supports the submission made in par [1.33]. It is impossible, on the evidence before the Inquiry, to identify the first horse in the general population that was infected with equine influenza (EI). Equally, it is impossible to determine how the virus escaped from an imported horse or horses into the general horse population. This has consequences for the certainty with which the Commission's

conclusion as to the manner of introduction of the virus is ultimately expressed; see par [16.27] of the submissions.

### **Section 3 – Recent outbreaks**

4. Coolmore supports the conclusions advanced in pars [3.13] and [3.14]. The material provided by Professor Cullinane shows that the strains of EI in Ireland in 2007 did not include strains of the Wisconsin sub-group. Further, Counsel Assisting's inquiries of the Irish Department of Agriculture, [3.14], support a finding that there were no EI outbreaks in the Fairy King farm and Prospect farm regions of County Tipperary at any relevant time.
5. The virus, accordingly, did not come from Ireland.

### **Section 9 – Importation of horses**

6. There is a generalised criticism in [9.10-9.11] of insufficient precautions in PEQ facilities in the United States, the United Kingdom, Japan and Ireland. However, the most important biosecurity factor identified in the submissions, showering in and out of a PEQ facility, was not a requirement of any import permit for horses imported from Ireland in 2007. There is nothing to suggest that had it been such a requirement that Coolmore Ireland would not have implemented such a regime.
7. The evidence covered the operation of PEQ facilities in major horse exporting (and importing) nations and none had a requirement for showering in and out of PEQ facilities.
8. It would not be appropriate for there to be a finding of any absence of the requisite interest in the induction process on the part of Messrs Carey and Walsh, as referred to in the references to par [9.53]. They were inducted in a brief and perfunctory

process after having undergone a very long and interrupted flight from Ireland to Australia. Furthermore, the document in question to which reference is made is the "Operating Procedures" document which, in Coolmore's submission, cannot be said with any certainty to actually have been handed out on 7<sup>th</sup> August 2007, which would of course explain why they did not recall it.

9. Par [9.54] says that procedures for vets and farriers were "similarly neglected". Mr Hinze is referred to. It is clear that Mr Hinze did not shower and change his clothes before leaving ECQS. However, Coolmore submits that when his evidence is read with that of Mr St John, it shows that Coolmore personnel did liaise with the staff of ECQS and, in particular, with the Manager, Mr Hankins about what was required of the farrier.
10. There is no basis for rejecting the evidence that Mr St John gave of that conversation. Mr Hankins was not able to deny it when he gave evidence and he was not recalled to rebut the evidence given by Mr St John. Accordingly, Coolmore personnel did what they could to find out from AQIS officers what Mr Hinze should do during and after his visit, but received no instructions from such officers. Had such instructions been given it is clear from the evidence of Mr Hinze that they would have been obeyed.

#### **Section 11- the six consignments**

11. In relation to the treatment of PEQ at Fairy King and Prospect farms, [11.77], Coolmore repeats the point that there was no requirement that people showered in or out imposed by either the then operative import conditions or the requirements of the Irish Department of Agriculture.

## Section 12 – attendance by vets, farriers and grooms

### Mr Hinze

12. Mr Hinze's evidence is dealt with at [12.31]-[12.41]. Coolmore's submission is that Mr Hinze presented as a witness of truth. He did not dissemble or seek to avoid any questions. His evidence should be accepted. On that evidence he had no contact with any horse in the general horse population on 14 August 2007, nor with any horse in subsequent days who contracted EI in that month.
13. The submission in par [12.37] is based upon the premise that one can 'track', virtually minute by minute, Mr Hinze's journey home by looking at his telephone records and the Optus areas in which such calls were made or received. The exercise, however, is not a scientific one and depends upon guesswork and estimates of speed and time that are at best attempts at reconstruction. Attempts have been made to make something of an alleged "missing period". There is no evidence that Mr Hinze's whereabouts were not known for  $\frac{1}{2}$  to  $\frac{3}{4}$  of an hour; par [12.37]. The phone records are not probative of anything other than a record of reference points in the telecommunications service and significantly, there was no challenge to Mr Hinze's further statutory declaration in which he dealt with his collection of the bridesmaid's dress.
14. On the evidence there is no basis for any suggestion that Mr Hinze introduced directly or indirectly the EI virus into the general horse population.

## Grooms

15. Coolmore submits that the evidence by Ms Cushing, [12.45], about grooms not showering out cannot be used to make any finding about any particular Coolmore groom or grooms in August 2007. The same submission is made in relation to Ms Maguire; [12.48].
16. Both witnesses gave evidence that they did not always shower out. Indeed, there is also evidence in the submissions that other, non-Coolmore grooms, did not always shower out of ECQS. There is no evidence of any particular Coolmore groom, in 2007, failing to shower out before leaving the ECQS. Nor significantly is there any evidence of a Coolmore groom who attended ECQS coming into contact with horses outside ECQS or coming into contact with people outside ECQS who were in contact with horses outside ECQS.
17. There is no evidence providing support for Ms Cushing's assertion, in so far as it may be contended that it extended to Coolmore grooms. None were identified by name or description. No occasion or occasions were identified. Ms Cushing had attended at ECQS for many years and it may well be that her recollection of events covers other years and other grooms.
18. Ms Cushing said that she saw other grooms leaving ECQS during the day, to go to the shops or the pub for lunch; [T1500/23]. This was immediately after she gave evidence that she did not always shower out on such occasions. She was then asked whether she observed, as best she could, others acting in the same manner; [T1500/30]. However, she gave no basis for that observation, nor for her assertion that it was common at lunchtime for grooms not to shower out; [T1500/35]. Indeed, she also gave evidence that some of the grooms did not wear the same clothes when they went out to lunch; [T1500/44].

19. In this context there should be no weight given to her assertion that some Coolmore grooms did not shower and change at lunchtime, although she said that some did; [T1501/10]. Darley grooms have given evidence that they did not always shower out. There is no evidence to show that Ms Cushing knew who were Darley and who were Coolmore grooms.
20. Ms Maguire's evidence on this point was equally vague. She said that she did not know who went out without showering or changing; [T1325/9]. When pressed by Counsel Assisting to identify such persons she replied "any one of the boys, I suppose"; [T1325/41]. This vague assertion was the best that she could do to support her evidence of people not showering out; [T1346/12]. It does not provide a basis for any finding that Coolmore grooms were not showering out in August 2007 before the outbreak.
21. As Counsel Assisting note in par [12.56] all Coolmore grooms gave evidence of showering out on each occasion upon which they left the station. They gave their evidence candidly and honestly and they should be believed. The faint criticism advanced in par [12.54], that their evidence about showering and using the book was "rather vague", does not fairly summarise their evidence. They knew that they had to shower out. They did so.
22. Although the rules of evidence do not apply, there are issues akin to those raised by section 140 of the *Evidence Act* and by *Briginshaw v Briginshaw* (1936) 60 CLR 336. It is a serious thing to say, of professional grooms, that they deliberately failed to comply with a direction relating to biosecurity and quarantine. Clear evidence and proofs to that effect would be required before making such a finding, either individually or by a class. Here there is no such basis for a finding to the effect that Coolmore grooms did not shower out as they said they did in 2007.

## Section 14 – Scientific testing

23. As Counsel Assisting point out, if either of the two horses, Rock of Gibraltar or Stravinsky was a fomite or their equipment carried sufficient of the virus into the ECQS then Encosta De Lago would have been expected to show clinical signs by 15 August 2007; [14.35]. No such signs were shown, however, until 17 August 2007. It is more likely, therefore, that the virus entered ECQS via Snitzel and then was transmitted into row E.

24. Dr Newton preferred a hypothesis of Rock of Gibraltar becoming infected in PAQ. He was however unaware of the details of Mr Bowd's interaction with row E grooms and being in the vicinity of row E horses after dealing with Snitzel in C8; see [T4209] and following. Dr Newton did not consider, specifically, what the position would be if Mr Bowd had shaken hands with Mr Hinze when Mr Hinze attended to the Coolmore horses (including Encosta De Lago) on 14 August 2007. Dr Newton gave no evidence of being aware of the ability of the virus to live in the human nose for a period of time. It is quite possible that Mr Bowd was a fomite for transmission to the horses in row E via virus on his skin, work clothes or respiration out of his nasal passages.

25. Coolmore submits that cross-infection from Snitzel to other horses in ECQS is more likely than an infection which involves an "unclear" route of infection via Rock of Gibraltar. The submissions, correctly in Coolmore's submission, accept that only Snitzel was infected before PAQ; [14.36].

26. The alternative thesis to infection of horses via Snitzel in ECQS is transmission, via Snitzel, of the virus on the aeroplane and its physical carriage into ECQS. Whichever explanation is chosen, however, it appears that neither of the Coolmore horses, Rock of Gibraltar and Stravinsky was infected with EI in PEQ and any carriage into ECQS of the virus, as a fomite, was due to exposure to the other,

infected, Japanese horses on the flight from Japan (be that horse Jungle Pocket, another stallion or one or more of the 6 mares).

#### **Section 16 – Overview of Counsel Assisting’s submissions**

27. The submission in par [16.27] should be limited to the medium of transmission being likely to be via contaminated persons or equipment. The evidence does not permit a definitive finding, as a fact, that the virus was transmitted into the general horse population in this way.

28. Coolmore does not take issue with the other recommendations put forward in this section. In addition, Coolmore recommends and supports the following:

28.1. In relation to recommendations proposed in respect of PEQ premises, Coolmore submits that adequate notice should be given to Coolmore of such inspections and that Coolmore should be able to appoint such of its employees, officers or agents to accompany such auditors or inspectors as well as an entitlement to obtain a copy of any audit report.

28.2. A register or registers should be created by AQIS so as to enable persons involved with the business of importing shuttle stallions into Australia to register thereon. Once registered there should be an obligation upon AQIS to provide those persons so registered with its up-to-date requirements and conditions for Import Permits in respect of all horses to be imported into Australia, differentiating any requirements in respect of different countries of origin or export. Additionally, Coolmore recommends that there should be a further obligation on AQIS that any time there is a change to those conditions for Import Permit requirements to notify those on the register.

- 28.3. AQIS should be required, either by way of regular communication to registered persons, or upon application by any interested person, to provide within a specified period of time to such persons information it has about relevant vaccines and any prescriptive requirements that it has in respect of vaccines and vaccination of horses.
- 28.4. AQIS should upon request be required to deliver to exporters or importers of stallions into Australia, the then current AQIS requirements for grooms in PEQ and management of horses within any AQIS establishment in Australia such that to the extent that any establishment has differing requirements, such distinction should be noted in the materials supplied.
- 28.5. Provision should be made for all forms, acknowledgments, protocols, policies and other relevant documents be signed and acknowledged by grooms and other Coolmore employees entering into an AQIS quarantine station, to be provided to Coolmore in advance, so that grooms and others are given the opportunity to be aware of and be provided with advice in relation to the contents of such documents and their obligations. This would enable training or explanations to be given in a timely fashion. Travelling grooms should be required to hand over any documents that are required to be signed at the time of entry into the quarantine station.
- 28.6. AQIS should set up a consultative committee with representatives of the Thoroughbred Breeders Association, the Australian Racing Board and others from industry separately to review on a regular basis, pre and post import/export quarantine requirements.

29. Coolmore Australia will co-operate fully in any industry consultation as discussed above.

Dated: 1 April 2008

A handwritten signature in black ink, appearing to read "Douglas Raftesath", is written over a horizontal dotted line.

Douglas Raftesath

Deacons

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