

**Commission of Inquiry**

**August 2007 Outbreak of Equine Influenza**

**Before the Hon. Ian Callinan AC**

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**Submissions of**

**AUSTRALIAN RACING BOARD LIMITED**

**THOROUGHBRED BREEDERS AUSTRALIA LIMITED**

**AUSHORSE LIMITED**

**HARNESS RACING AUSTRALIA INC.**

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**Overview**

1. The August 2007 outbreak of Equine Influenza was a disaster for the Australian horse racing and breeding industry, and for many of the individual Australians who earn their living from horse racing or breeding. The direct costs incurred by the industry and by the Commonwealth in merely containing the outbreak total more than \$130 million. The industry and its participants have lost many more millions of dollars of income due to the resulting cancellations and restrictions on racing and breeding activities.
  
2. The evidence before the Commission strongly supports a finding that the Equine Influenza virus entered Australia via one or more of the horses imported from Japan on 8 August 2007. The evidence also reveals that:
  - 2.1. Five mares: Orchard Oasis, Acoustics, Western World, Full of Laughter and Royal Successor are likely to have been infected with the virus before leaving the premises where they stood during Pre-Export Quarantine (**PEQ**). During PEQ, each of those mares stood in a paddock at the same location: Northern Farm at Kuko, Chitose, on the island of Hokkaido (**Northern Farm**).
  - 2.2. It is probable that those 5 mares were shedding the virus into the shared airspace on board the cargo plane en route to Australia, and thereby transmitted the virus to some of the other horses on board.
  - 2.3. The 5 mares and some of the horses they had infected were then taken to a Post-Arrival Quarantine (**PAQ**) facility at Spotswood Quarantine Station (**SQS**), while at least one of the horses they had infected in flight (probably Snitzel and/or Rock of Gibraltar) was taken to Eastern Creek Quarantine Station (**ECQS**).
  - 2.4. The serological evidence as to what occurred within ECQS is consistent with the conclusion that the virus entered Australia via one or more of the horses imported from Japan on 8 August 2007. Indeed, on the evidence, the only likely explanation for the presence of the virus within ECQS is that it was carried there by or on one or more of the horses from Japan (Snitzel, Rock of Gibraltar and (less likely) Stravinski), or else on their equipment or on the person of someone who had contact with those horses.

- 2.5. Precisely how the virus was subsequently transmitted to the other horses within ECQS has not been established by the evidence. It is likely that Encosta de Lago was the first of the horses from places besides Japan to be infected, although it may be that Fox & Furkin was infected earlier or at about the same time. There may have been a transmission of the disease directly (via aerosolised droplets) from either Rock of Gibraltar or Stravinski (with the former being by far the more likely candidate) to Encosta de Lago and/or Fox & Furkin. However, the mechanism of transmission was not obvious, and (although less likely) it is possible that the virus was transmitted to Encosta de Lago and/or Fox & Furkin by means of physical contamination (fomites) via equipment or handling by grooms or other persons.
  - 2.6. Thereafter, the virus spread to other horses within ECQS. Horse-to-horse transmission (via aerosolised droplets) is the most likely means by which the virus was transmitted, but physical contamination (fomites) is a real possibility, as is a combination of the two.
  - 2.7. The most likely means by which Equine Influenza entered the general horse population is via a contaminated person or equipment leaving ECQS and coming into contact with a horse in the general population. The person or item of equipment in question has not been revealed by the evidence.
3. The Commission should find that the outbreak would not have occurred had it not been for a number of serious deficiencies and failures in the content and operation of the PEQ and PAQ regimes for which the Australian Quarantine and Inspection Service (**AQIS**) and Biosecurity Australia (**BA**) were responsible. The Commission should find that the outbreak was not the result of a momentary lapse, a freak occurrence or the actions of a rogue individual, but the almost inevitable result of the failure of AQIS and BA, over a number of years, to take positive and (in many respects) basic and self-evident steps to comprehensively assess the risks posed by the importation of horses, to formulate and impose biosecurity measures calculated to best manage those risks, and to ensure that the measures which were in place were actually being complied with in Australia and overseas.

#### **Impact of the outbreak**

4. In order to appreciate the significance of the August 2007 outbreak of Equine Influenza, and to grasp the importance of this Commission and the recommendations it makes, it is necessary to acknowledge that the outbreak has had a profound effect on the lives of thousands of Australians.
5. Horse racing is one of Australia's oldest and most popular sports. The first organised thoroughbred race meeting in this country was held in Hyde Park, Sydney, in 1810, with Governor Macquarie in attendance. Today, about 2 million Australians attend a thoroughbred race meeting at least once per year, and almost 500,000 attend at least one harness race meeting.<sup>1</sup> While racing's best known event, the Melbourne Cup, is now an international spectacle viewed by 700 million people, throughout most of the

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<sup>1</sup> ABS 2007.

country, racing continues much as it was, with picnic meetings run in almost every place big enough to be called a town – as well as in some that are not – and for most rural communities, their Cup race day remains one of the social highlights of the year.

6. There are 397 thoroughbred and 116 harness racing clubs in Australia, which is more than any other country in the world. The clubs are non-profit organisations whose committees and members work on a volunteer basis.
7. Australian racing is also a major economic activity, making a significant contribution to the national GDP, employment and government revenue. According to a recent report, the economic activity generated by thoroughbred racing and breeding alone contributes more than \$5.04 billion to the national GDP.<sup>2</sup> It was estimated that almost half of that amount (\$2.2 billion) is generated in regional areas. The thoroughbred racing and breeding industry was estimated to account for more than \$560 million per annum in taxation revenue for the Commonwealth, plus \$610 million per annum in taxation revenue for the States.<sup>3</sup>
8. According to a recent report, more than 65,500 individuals derive full-time, part-time or casual employment from the thoroughbred racing and breeding industry.<sup>4</sup> The economic activity generated by thoroughbred racing and breeding was estimated to sustain more than 48,680 full-time equivalent positions across Australia. If harness racing and breeding are taken into account, the extent of economic activity and the contribution to employment is larger still. Racing and breeding also help to sustain employment in other areas of the economy, such as feed merchants, veterinarians, farriers, transport companies, caterers, hoteliers, and the fashion industry.
9. Australia's thoroughbred breeding sector is one of the largest and most successful in the world. Exports are an important part of the Australian industry, with Australian bloodstock highly regarded internationally. In 2006/7, some 2,378 Thoroughbreds were exported from Australia on a temporary or permanent basis.<sup>5</sup>
10. The outbreak of Equine Influenza in August 2007 was, quite simply, a disaster for the racing and breeding industries of this country. By noon on 26 August 2007, all weekend race meetings in Australia had been cancelled and in the first week 50 thoroughbred race meetings were lost. The standstill was soon lifted elsewhere, but in NSW and Queensland no metropolitan race meetings were held for 3 months and racing in other parts of those States was dislocated for several months. In NSW alone, a total of 193 thoroughbred race meetings were lost (30 metropolitan, 31 provincial, and 132 country). This included the Sydney Spring Carnival, from which the industry traditionally derives a large portion of the annual wagering income that is used to fund all NSW racing clubs. In addition, 250 harness race meetings were lost in NSW, and further 81 harness race meetings were lost in Queensland.

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<sup>2</sup> IER Pty Ltd *"Economic Impact of Australian Racing"* (2007).

<sup>3</sup> IER Pty Ltd *"Economic Impact of Australian Racing"* (2007).

<sup>4</sup> IER Pty Ltd *"Economic Impact of Australian Racing"* (2007).

<sup>5</sup> WIT.ARB.002.0008 at [39], 0217 (Ford).

11. For the majority of participants in the industry who live and work in NSW or Queensland, no race meetings meant no or reduced income. The jockeys, for example, earn a fee per race plus a percentage of prize money, and so were deprived of their earnings. Trainers' incomes were substantially reduced, though their expenses were essentially unchanged. In the Queensland harness racing industry alone, up to 400 full-time drivers, strappers and stable hands temporarily lost their jobs due to the suspension of racing.
12. The situation for industry participants was so dire that the Federal Government established a scheme of emergency financial assistance for industry participants, modelled on previous schemes for natural disasters such as Cyclone Larry, which the current Minister, Mr. Tony Burke, has extended.
13. In the breeding industry, the outbreak has resulted in a depleted foal crop, with the Australian Stud Book predicting a 13% fall in live foals from NSW and a 17% fall in live foals from Queensland. Nationwide, the thoroughbred foal crop is predicted to fall by 10% from that of the previous year.<sup>6</sup> This will have an impact on breeders' incomes, as well as on the size of the racehorse populations in future years.
14. As well as a depleted foal crop, breeders had to contend with the suspension of all imports of Australian horses to New Zealand, Hong Kong, the United Arab Emirates, Malaysia, the Philippines, Singapore, Macau, France and Qatar. A total ban on all Australian horse imports to New Zealand remains in place 7 months after the outbreak.
15. A report by the Australian Bureau of Agricultural and Resource Economics estimated that the direct costs of the Equine Influenza outbreak during the initial response period, involving containment and eradication through restricted movement, had reached \$500,000 per day for disease control alone, plus \$4.6 million per day in forgone income for businesses affected by Equine Influenza, including racing, farming and recreational businesses.<sup>7</sup>
16. The racing industry derives over 70% of its income from wagering. The outbreak of Equine Influenza substantially reduced wagering income, not just in NSW and Queensland, but throughout Australia, as bets are taken on the national program. While accurate figures are not yet available, the CEO of Tabcorp has estimated a reduction in wagering turnover due to the outbreak of \$550 million for Tabcorp alone up to the end of 2007.
17. Compounding the loss of revenue has been the cost of containing the outbreak, including vaccination costs and implementing special biosecurity measures at racecourses and training establishments. The industry has borne an estimated \$30 million of such direct costs thus far.

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<sup>6</sup> Media Release, ASB, 23 January 2008.

<sup>7</sup> Report to the Consultative Committee on Emergency Animal Diseases, 26 September 2007.

18. It is understood that the Commonwealth has expended approximately \$108 million on the response to the outbreak, which makes it the most costly emergency animal disease response in the nation's history. The Commonwealth could seek to recover some of those costs from horse owners. On 21 February 2008, 3 bills were tabled in the House of Representatives, the aim of which is to enable the recoupment of Commonwealth expenditure on emergency responses to disease outbreaks by establishing a "horse disease response levy" payable by horse owners upon the first registration of a horse.<sup>8</sup> A decision on whether to use this legislation to recover costs of the outbreak will not be made until after delivery of this Commission's report.
19. Collectively, Australian Racing Board Limited (**ARB**), Thoroughbred Breeders Australia Ltd (**TBA**), Aushorse Limited (**Aushorse**) and Harness Racing Australia Inc. (formerly the Australian Harness Racing Council Inc.) (**HRA**) are charged with representing and promoting the interests of the Australian thoroughbred racing industry, Australian thoroughbred breeders and the Australian harness racing industry. Those industries and the people who work therein have suffered significant personal and financial hardships as a result of the August 2007 outbreak of Equine Influenza. The findings and recommendations made by this Commission will enable those industries and those people to learn the causes of the outbreak, and (more importantly) will provide the blueprint for a quarantine system that ensures, so far as practicable, that an outbreak of this kind never occurs again.

#### **How the Equine Influenza virus came to Australia in August 2007**

20. The evidence before the Commission strongly supports a finding that most of the 13 horses imported to Australia from Japan on 8 August 2007 were exposed to and infected with the Equine Influenza virus prior to arrival in this country. There is no evidence that the virus was present anywhere in Australia before that time. It is also most unlikely, on the evidence, that any of the horses imported from places besides Japan at or around that time were responsible for bringing the virus to Australia.
21. The following matters in particular support the conclusion that the virus entered Australia via one or more of the horses imported from Japan on 8 August 2007:
  - 21.1. The serological results and analyses demonstrate that horses held in both Eastern Creek Quarantine Station (**ECQS**) and Spotswood Quarantine Station (**SQS**) were infected with Equine Influenza.<sup>9</sup> Accordingly, it is necessary to account for the simultaneous presence of the virus in both locations. Applying Occam's razor, the most probable explanation is that the presence of the virus in both locations can be traced to a single source, as opposed to there being two or more quite separate importations of the virus into Australia at around

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<sup>8</sup> *Horse Disease Response Levy Bill 2008 (Cth)*; *Horse Disease Response Levy Collection Bill 2008 (Cth)*; *Horse Disease Response Levy (Consequential Amendments) Bill 2008 (Cth)*.

<sup>9</sup> See: AHT.0001.001.0008 – 0010, 0022 – 0023 (Dr. Newton). Although Dr. Newton's report refers to 7 horses, it did not include the results for Zeno Rob Roy, which Dr. Watson's report indicates seroconverted between 24/25 July and 24 August 2007: WIT.AAHL.001.0251. Dr Newton apparently did not have the result of the relevant test: T4201.1 – 42 (Dr. Newton).

the same time. The consignment of horses imported to Australia from Japan on 8 August 2007 is the only consignment which contained horses bound for both ECQS and SQS.

- 21.2. Of the 9 horses imported from Japan and held in SQS, 8 seroconverted between Pre-Export Quarantine (**PEQ**) samples taken on 24 or 25 July and Post-Arrival Quarantine (**PAQ**) samples taken on 24 August 2007.<sup>10</sup>
- 21.3. There is no evidence of seroconversion taking place in any of the other horses held within SQS.<sup>11</sup> There is also no evidence of another vector or means by which the virus entered SQS.<sup>12</sup>
- 21.4. At least 5 horses imported from Japan and held in SQS (Orchard Oasis, Acoustics, Western World, Full of Laughter and Royal Successor) had mounted serological responses to the virus by 13 August (that is, within 5 days of arrival in Australia), and were unlikely to be shedding the virus at that stage.<sup>13</sup> Bearing in mind a likely latent period for the virus of 2 days,<sup>14</sup> as well as a likely infectious period of between 7 and 10 days;<sup>15</sup> and also bearing in mind that it takes 14 to 21 days for titre levels to peak,<sup>16</sup> it is unlikely that Orchard Oasis, Acoustics, Western World, Full of Laughter and Royal Successor were first infected after they arrived in SQS.
- 21.5. Each of the 13 horses imported from Japan underwent PEQ on the island of Hokkaido during the period 17 July and 7 August 2007, and subsequently there were a number of notifications to the OIE of an outbreak of Equine Influenza on Hokkaido having occurred from 14 August 2007.
- 21.6. The Ibaraki/07 strain of the virus isolated in Japan and the Sydney /07 strain of the virus isolated from horses in ECQS and Centennial Park Equestrian Centre (**CPEC**) are identical.<sup>17</sup> In Dr. Watson's view, this constitutes a "*presumptive link in a chain of transmission*", or makes it a "*strong hypothesis*" that the virus came to Australia from Japan.<sup>18</sup>
- 21.7. There is no evidence of the Sydney/07, Ibaraki/07 or Pennsylvania/07 strains being present in the United Kingdom at any material time.<sup>19</sup>
- 21.8. If a horse imported from the United States was the source of the infection in ECQS, it would not explain the presence of the virus in SQS.<sup>20</sup>
- 21.9. There is no evidence which demonstrates or makes it likely that the virus was present within ECQS prior to the arrival of Snitzel and Rock of Gibraltar on 8 August.<sup>21</sup>

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<sup>10</sup> AHT.0001.001.0009 (Dr. Newton).

<sup>11</sup> T3953.47, 3954.28 (Dr. Watson); AHT.0001.001.0008 (Dr. Newton). However, it should be noted that there are no PEQ samples available from the USA.

<sup>12</sup> T3954.23 (Dr. Watson).

<sup>13</sup> AHT.0001.001.0008 – 0009 (Dr. Newton).

<sup>14</sup> T3338.37 (Dr. Nunn).

<sup>15</sup> T3338.14 (Dr. Nunn).

<sup>16</sup> T3905.34, 3933.40, 3949.13 – 20 (Dr. Watson). Dr. Newton said an immune response to infection is mounted "*generally within a fortnight*": T4178.18.

<sup>17</sup> T33896.29 (Dr. Watson); AHT.0001.001.0020 – 0022 (Dr. Newton); T4183.25 – 36 (Dr. Newton).

<sup>18</sup> T3896.33, 3897.3 (Dr. Watson). See also: T3594.40 (Dr. Watson). Dr. Watson accepted that a US origin could not be excluded as a possibility: T3897.3, 3936.8, 3937.26, 3938.34.

<sup>19</sup> T3908.21 (Dr. Watson).

<sup>20</sup> T4181.27 (Dr. Newton).

- 21.10. Taking into account the information available to him, Dr. Newton expressed the opinion that Japan was the likely source of the outbreak in Australia.<sup>22</sup> Dr. Gilkerson agrees with that conclusion.<sup>23</sup>
22. The evidence also enables the Commission to distinguish between the 13 horses imported from Japan, so as to identify which of them are most likely to have been infected with the virus before the others, and to thereby ascertain with more precision where and when it was that Equine Influenza first penetrated the quarantine system.
23. In that regard, it is most unlikely that all of the horses imported from Japan were first infected while they were being transported from their PEQ premises to Chitose Airport, or whilst they were on the plane. Such scenarios would not account for the fact that 5 of the horses imported from Japan (Orchard Oasis, Acoustics, Western World, Full of Laughter and Royal Successor) had elevated titre levels between PEQ and PAQ, but were no longer actively infectious after 13 August (their titre levels remained constant after that date).<sup>24</sup> The seroconversions which occurred in these 5 mares cannot be explained by recent vaccination.<sup>25</sup> Moreover, as at 13 August, only about 6 days had elapsed since the horses were transported to Chitose Airport. Bearing in mind a likely latent period for the virus of 2 days,<sup>26</sup> plus a likely infectious period of between 7 and 10 days,<sup>27</sup> and also bearing in mind that it normally takes 14 to 21 days for titre levels to peak,<sup>28</sup> it is unlikely that all 5 horses would have ceased to be infectious and have stabilised titre levels within 5 or 6 days of initial infection. It is therefore unlikely that Orchard Oasis, Acoustics, Western World, Full of Laughter and Royal Successor were first infected with Equine Influenza at or on route to Chitose Airport (or thereafter).
24. It follows that Orchard Oasis, Acoustics, Western World, Full of Laughter and Royal Successor (all of which are mares) are likely to have been infected before leaving the premises where they stood during PEQ. Significantly, during PEQ, each of those mares stood in a paddock at the same location: Northern Farm at Kuko, Chitose, on the island of Hokkaido (**Northern Farm**).<sup>29</sup>
25. If it be accepted that those mares were probably infected before leaving Northern Farm, then the Commission should find that the Equine Influenza virus entered or was

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<sup>21</sup> Both Dr. Newton and Dr. Gilkerson were of the opinion that Encosta de Lago (the first horse within ECQS to show clinical signs of infection and (with the possible exception of Fox & Furkin) the first to seroconvert) was most likely infected after it arrived at ECQS: T4177.15 (Dr. Newton); AHT.0001.001.0011 (Dr. Newton); T94.5 – 95.14 (Dr. Gilkerson). Dr. Newton's evidence was that the serological results for Fox & Furkin were indicative of infection with equine influenza soon after arrival at ECQS: AHT.0001.001.0012 – 0013 (Dr. Newton); 4177.31 (Dr. Newton).

<sup>22</sup> AHT.0001.001.0022 – 0023 (Dr. Newton); T4181.27 – 33, 4185.1 – 9 (Dr. Newton).

<sup>23</sup> WIT.INQ.003.0011 (Dr. Gilkerson – Supplementary Report).

<sup>24</sup> AHT.0001.001.0009 (Dr. Newton).

<sup>25</sup> They were all vaccinated on 29 June 2007, and did not seroconvert until after blood samples were taken on 24/25 July 2007: AQIS.0001.017.0262; WIT.AAHL.001.0251 – 0252.

<sup>26</sup> T3338.37 (Dr. Nunn).

<sup>27</sup> T3338.14 (Dr. Nunn).

<sup>28</sup> T3905.34, 3933.40, 3949.13 – 20 (Dr. Watson).

<sup>29</sup> AQIS.0001.017.0262.

present at Northern Farm during PEQ; that 5 of the 6 mares stabled at Northern Farm and bound for Australia became infected with the virus whilst undergoing PEQ at that location;<sup>30</sup> that those 5 mares were carrying the virus on route to and at Chitose Airport, as well as on the plane to Australia; and that those 5 mares were probably the source of the August 2007 outbreak of Equine Influenza in Australia.

26. If (as is probable) the 5 mares were carrying the virus throughout the flight from Japan to Australia, it is highly probable that they infected other horses that were on board. Dr. Newton said it was:<sup>31</sup>

*“...hard to conceive that if there was virus shed into a shared airspace, as might be expected in the hold of a cargo plane, that there would not be widespread contamination of that environment with the virus, and therefore any of the Japanese horses, in theory, could have acted as a source of the virus in this outbreak.”*

Further, the evidence indicates that none of the other horses imported from Japan and taken to SQS or ECQS is likely to have been first infected with the virus before or simultaneously with Orchard Oasis, Acoustics, Western World, Full of Laughter and Royal Successor. Notably, in contrast to those 5 mares (all of whom had seroconverted for the virus by 13 August 2007 and did not do so thereafter)<sup>32</sup>:

- 26.1. Jungle Pocket seroconverted for the virus between 13 and 24 August (after the 5 mares),<sup>33</sup> and was exhibiting clinical signs of infection upon arrival at SQS.<sup>34</sup> There is no evidence which shows or makes it likely that Jungle Pocket was infected with the virus prior to being transported to Chitose Airport and loaded on board the same flight as the 5 mares from Northern Farm. Indeed, Dr. Newton expressly said that Jungle Pocket is likely to have been infected “*later than the others*” (i.e., after the 5 mares).<sup>35</sup> Dr. Watson put the “*likely timing of infection*” at “*around the time of arrival*”,<sup>36</sup> and agreed that Jungle Pocket had the virus whilst at SQS,<sup>37</sup> which is consistent with infection first occurring at Chitose Airport or in transit from Japan to Australia.
- 26.2. Zeno Rob Roy and Black Hawk both seroconverted for the virus between 13 and 24 August (after the 5 mares).<sup>38</sup> The evidence does not show or make it likely that Zeno Rob Roy or Black Hawk were infected with the virus prior to being transported to Chitose Airport and loaded on board the same flight as the 5 mares from Northern Farm. Dr. Newton said that Zeno Rob Roy is in the same category as Jungle Pocket (i.e., is likely to have been infected after the

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<sup>30</sup> These mares seroconverted after 24/25 July, at least 8 days after entering PEQ. Further, the incubation and infective periods of the virus are such that it is very unlikely that these mares would have remained infectious until 7 or 8 August if they had been infected prior to the commencement of PEQ on 17 July 2007 (i.e., more than 21 days beforehand).

<sup>31</sup> T4192.4 – 9 (Dr. Newton).

<sup>32</sup> WIT.AAHL.001.0251 – 0252.

<sup>33</sup> WIT.AAHL.001.0251.

<sup>34</sup> CBHT.0001.001.0183 (Tax Invoice from Flemington Equine Clinic, Dr. Flash).

<sup>35</sup> T4200.37 (Dr. Newton).

<sup>36</sup> T3905.14 (Dr. Watson).

<sup>37</sup> T3906.6 (Dr. Watson).

<sup>38</sup> WIT.AAHL.001.0251, 0254.

5 mares);<sup>39</sup> and that Black Hawk was also likely to have been infected after the 5 mares.<sup>40</sup> Dr. Watson said that the results for Zeno Rob Roy were “*broadly similar*” to those for Jungle Pocket.<sup>41</sup>

- 26.3. Snitzel seroconverted for the virus between 13 and 27 August (in addition to seroconverting in the period 24 July to 13 August).<sup>42</sup> Dr. Newton initially said that Snitzel was almost certainly infected around the end of July,<sup>43</sup> but later said that Snitzel was in “*a similar situation*” to Jungle Pocket and Zeno Rob Roy (i.e., it was infected after the 5 mares),<sup>44</sup> which he said was “*consistent with the virus appearing to be present in PEQ and may well have been present and active during air transport to Australia*”.<sup>45</sup> Dr. Newton later said: “*it could easily be at the beginning of August, within several days of August... it was possibly early August*”.<sup>46</sup> Therefore, taken as a whole, Dr. Newton’s evidence is that Snitzel is likely to have been first infected after the 5 mares were infected, and is consistent with Snitzel being infected in transit from Japan to Australia. For his part, Dr. Watson said that the test results pertaining to Snitzel suggest that it was “*infected around the time of transport*” from Japan,<sup>47</sup> and that one would have to be very cautious about trying to be precise about whether Snitzel was first infected before or after entry to Australia.<sup>48</sup> This is also consistent with Snitzel having been first infected in transit from Japan to Australia, rather than at a time before the 5 mares.
- 26.4. Rock of Gibraltar seroconverted for the virus between 13 and 24 August (after the 5 mares).<sup>49</sup> There is no evidence which shows or makes it likely that Rock of Gibraltar was infected with the virus prior to being transported to Chitose Airport and loaded on board the same flight as the 5 mares from Northern Farm. Indeed, the JRA test results demonstrate that there was no seroconversion in Rock of Gibraltar between 24/25 July and 13 August,<sup>50</sup> which Dr. Newton interpreted as suggesting that there was no active infection in Rock of Gibraltar during PEQ, and that “*the animal may well have met infection around the time shortly after arrival in PAQ*”.<sup>51</sup> He agreed that Rock of Gibraltar may have been infected during the flight by another shedding horse.<sup>52</sup>

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<sup>39</sup> T4201.42 (Dr. Newton).

<sup>40</sup> T4202.30 (Dr. Newton). See also: T4202.18 (Dr. Newton), where the same view was expressed with a note of caution.

<sup>41</sup> T3934.27 (Dr. Watson).

<sup>42</sup> WIT.AAHL.001.0247; AHT.0001.001.0010 (Dr. Newton); T4173.12 – 30, 4174.24 – 42 (Dr. Newton).

<sup>43</sup> T4175.11 (Dr. Newton).

<sup>44</sup> T4202.4 (Dr. Newton). See also: T4202.5 (Dr. Newton), where the same view was expressed with a note of caution.

<sup>45</sup> T4202.6 (Dr. Newton).

<sup>46</sup> T4206.21 – 40 (Dr. Newton).

<sup>47</sup> T3907.2 (Dr. Watson).

<sup>48</sup> T3946.41 (Dr. Watson).

<sup>49</sup> WIT.AAHL.001.0246; AHT.0001.001.0010 (Dr. Newton); T4175.37 – 4176.18 (Dr. Newton).

<sup>50</sup> WIT.AAHL.001.0246.

<sup>51</sup> T4176.20 – 27 (Dr. Newton). See also: T4203.18, 4208.23 (Dr. Newton).

<sup>52</sup> T4191.37 – 44 (Dr. Newton).

- 26.5. There was no evidence of seroconversion in Stravinsky, Grandera or T.H. Dancer at any time.<sup>53</sup>
27. None of this denies or detracts from the proposition that Jungle Pocket, Zeno Rob Roy and Black Hawk probably had the Equine Influenza virus whilst in SQS, or that Snitzel and Rock of Gibraltar were probably infected with the virus before they entered ECQS. However, the probabilities are that each of those horses was first infected at Chitose Airport, or in transit from Japan to Australia, when they were in close proximity to Orchard Oasis, Acoustics, Western World, Full of Laughter and Royal Successor over an extended period. The reverse proposition (that Jungle Pocket, Zeno Rob Roy, Black Hawk, Snitzel and/or Rock of Gibraltar directly or indirectly transmitted the virus to the 5 mares) is difficult to reconcile with the evidence as to the relative dates on which seroconversion occurred. Dr. Newton agreed it was “*probably reasonable*” to conclude that it is less likely that Jungle Pocket, Zeno Rob Roy, Black Hawk, Snitzel and/or Rock of Gibraltar were the first of the Japanese horses to be infected with the virus.<sup>54</sup>
28. While it is possible that Jungle Pocket, Zeno Rob Roy, Black Hawk, Snitzel and/or Rock of Gibraltar were infected by means entirely unrelated to the 5 mares, such a hypothesis is unnecessarily complex, and therefore less likely than the simpler hypothesis outlined above. There is also no evidence which indicates that the complex hypothesis should be preferred; whereas there is evidence that the 5 mares were infected before the others, which evidence is in favour of the simpler approach.
29. Before leaving this topic, it is necessary to note that, during re-examination of Dr. Britton, evidence was led to the effect that the AHT results indicating that there was no seroconversion in Snitzel and Zeno Rob Roy during the period 13 to 24 August should be preferred to the AAHL results which indicate that there was seroconversion in those horses during the same period, on the sole ground that AHT is a world reference laboratory but AAHL is not.<sup>55</sup> It was then put to Dr. Britton as a “*fact*” that “*there is no seroconversion in the period 13 to 24 to 27 August*”.<sup>56</sup> The following points need to be made about that proposition:
- 29.1. No evidence was led from Dr. Newton or from Dr. Watson to the effect that the relevant AAHL results were unreliable or that those results should be ignored.
- 29.2. It was not suggested by or to Dr. Newton or Dr. Watson that, in fact, there was no seroconversion in Snitzel and Zeno Rob Roy during the period 13 to 24 August. Nothing to that effect was suggested by anybody until Dr. Britton’s re-examination.
- 29.3. In his report, Dr. Newton expressly stated that “*there was also evidence for SNITZEL of further seroconversion at 27/8/07 for the Sydney/07 antigen*”, which was obviously a reference to the AAHL test result.<sup>57</sup>

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<sup>53</sup> WIT.AAHL.001.0247, 0248, 0251.

<sup>54</sup> T4203.21 – 28 (Dr. Newton).

<sup>55</sup> T4313.1 – 4316.17 (Dr. Britton).

<sup>56</sup> T4316.19.

<sup>57</sup> AHT.0001.001.0010 (Dr. Newton).

- 29.4. In oral evidence, Dr. Newton referred to the AAHL test results for Snitzel and said they:

*“...could be consistent with what we saw in our laboratory”*.<sup>58</sup>

He also referred to the AAHL results later in his evidence, saying:

*“We also see that there was a seroconversion, based on the AHHL results, between 13 August and 27 August, so this animal, whilst we have seen a rise from a very low base level, has continued to rise [after 13 August] on the basis of one antigen by the AHHL testing. So that, I would contend, would tend to suggest that [Snitzel was first infected] possibly early August”*.<sup>59</sup>

Far from dismissing the AAHL results and asserting that there was no seroconversion in Snitzel after 13 August, Dr. Newton took the AAHL results into account in expressing his opinion that Snitzel may have been first infected in early August rather than in late July.

- 29.5. Dr. Watson was initially only taken to the JRA results for the period up to 13 August and the subsequent AHT results. Dr. Watson agreed *“on the basis of those results”* that a possible interpretation was that Snitzel was infected *“prior to arrival in Australia”*.<sup>60</sup> However, when he was asked a more general question about the results pertaining to Snitzel and certain other horses, Dr. Watson said: *“All of those results suggest that the horses were infected around the time of transport”*.<sup>61</sup> When he was specifically taken to the AAHL and JRA test results for the period after 13 August, Dr. Watson said that, given the nature of those results, one would have to be very cautious about trying to be precise about when Snitzel was first infected.<sup>62</sup> Again, there was no suggestion from Dr. Watson that the AAHL or the JRA results for the period after 13 August could or should be ignored when considering the likely time at which Snitzel was first infected with the virus.
- 29.6. Although Dr. Britton was asked to compare the results for Snitzel achieved by AAHL and AHT respectively, she was not asked to comment on the fact that AAHL was not the only laboratory which detected seroconversion in Snitzel during the period after 13 August.<sup>63</sup> The JRA laboratory likewise detected a four-fold increase in titre for the H3 (Sydney) strain.<sup>64</sup> Further, were the Commission to rely on the AHT results to the exclusion of AAHL and JRA, there would be no evidence of seroconversion by Snitzel. All of the AHT tests pertaining to Snitzel detected constant or declining titre levels.<sup>65</sup> It would be rather odd to rely on the JRA results for a conclusion that Snitzel seroconverted prior to 13 August, but to dismiss the JRA results showing

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<sup>58</sup> T4175.16 (Dr. Newton).

<sup>59</sup> T4206.35 – 40 (Dr. Newton).

<sup>60</sup> T3902.18 – 3903.9 (Dr. Watson).

<sup>61</sup> T3906.42 – 3907.13 (Dr. Watson).

<sup>62</sup> T3946.41 (Dr. Watson).

<sup>63</sup> See: T4313.34 – 4314.21 (Dr. Britton).

<sup>64</sup> WIT.AAHL.001.0247.

<sup>65</sup> WIT.AAHL.001.0247.

seroconversion after that date as some sort of aberration; particularly when the later results are corroborated by AAHL.

- 29.7. Similarly, the AHT results for Rock of Gibraltar show no seroconversion, but the JRA results show seroconversion after 13 August.<sup>66</sup> In contrast to what occurred in relation to Snitzel and Zeno Rob Roy, it is not suggested that, in fact, there was no seroconversion in Rock of Gibraltar because the results achieved by AHT must be preferred. Such a suggestion would contradict Dr. Newton's view that Rock of Gibraltar is the most likely candidate for transmitting the virus to Encosta de Lago within ECQS.<sup>67</sup>
- 29.8. Finally, in his report, Dr. Newton cautioned that:<sup>68</sup>

*"...there are factors related to the precise way that an HI test is conducted that will influence the results... care should be taken in not over-interpreting differences in results from the same samples on tests conducted by different laboratories at different times."*

A similar caution was given by Dr. Watson in his oral evidence.<sup>69</sup> The attempt to attribute some significance to differences in the results achieved by AAHL and AHT respectively, and to reach conclusions which dismiss the former laboratory's results, is precisely the sort of exercise that both Dr. Newton and Dr. Watson warned against.

### **Transmission of the virus within ECQS**

30. In contrast to the situation within SQS (where none of the horses from places besides Japan showed evidence of infection), a number of horses within ECQS seroconverted after 13 August. Leaving aside Snitzel and Rock of Gibraltar (who were imported from Japan and are discussed above) and horses whose results were explained in evidence as likely to be the effects of recent vaccination or as *"not meaningful"*:

- 30.1. Encosta de Lago seroconverted between 13 and 20 August, as well as between 20 and 27 August 2007.<sup>70</sup> With the possible exception of Fox & Furkin, none of the other horses imported from places besides Japan seroconverted due to infection before Encosta de Lago. Its titre levels were very low in its first PAQ sample,<sup>71</sup> which made it highly susceptible to infection and more likely to shed large amounts of the virus within ECQS, thus facilitating transmission to adjacent horses or via fomites.<sup>72</sup> Dr. Newton's evidence was that the serological results were consistent with this animal being first infected with equine influenza soon after its arrival at ECQS (on 7 August) and being one of the first ("non-Japanese") horses infected with the virus.<sup>73</sup> Encosta de Lago began exhibiting clinical signs of the virus on 17 August 2007.

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<sup>66</sup> WIT.AAHL.001.0246.

<sup>67</sup> AHT.0001.001.0014 – 0015 (Dr. Newton); T4180.1 – 4181.16 (Dr. Newton).

<sup>68</sup> AHT.0001.001.0004, 0016 – 0017 (Dr. Newton).

<sup>69</sup> T3928.28 – 42 (Dr. Watson).

<sup>70</sup> WIT.AAHL.001.0246; AHT.0001.001.0011 (Dr. Newton).

<sup>71</sup> WIT.AAHL.001.0246.

<sup>72</sup> AHT.0001.001.0011 (Dr. Newton); T4176.38 – 4177.15 (Dr. Newton).

<sup>73</sup> T4177.15 (Dr. Newton); AHT.0001.001.0011 (Dr. Newton).

- 30.2. Fox & Furkin seroconverted between 13 and 20 August (on AHT tests) or between 27 August and 7 September (on AAHL tests).<sup>74</sup> Dr. Newton's evidence was that the serological results were indicative of infection with equine influenza soon after arrival at ECQS.<sup>75</sup> He noted that this horse also had relatively low titres and may have acted to amplify the virus in the early stages.<sup>76</sup>
- 30.3. Holy Roman Emperor, Oratorio, Antonius Pius, Ad Valorem seroconverted between 20 and 27 August.<sup>77</sup> Dr. Newton's evidence was that the timing of these and subsequent seroconversions was not consistent with infection during PEQ.<sup>78</sup>
- 30.4. Danehill Dancer and Aussie Rules seroconverted between 20 August and 7 September 2007.<sup>79</sup>
- 30.5. Doring Court, Golden Snake, Sharmadal and Dubai Destination seroconverted between 27 August and 7 September 2007.<sup>80</sup>
31. The serological evidence as to what occurred within ECQS is consistent with the conclusion that the virus entered Australia via one or more of the horses imported from Japan on 8 August 2007. Indeed, on the evidence, the only likely explanation for the presence of the virus within ECQS is that it was carried there by or on one or more of the horses from Japan (Snitzel, Rock of Gibraltar and Stravinski), or else on their equipment or on the person of someone who had contact with those horses.<sup>81</sup>
32. Precisely how the virus was subsequently transmitted to the other horses within ECQS has not been established by the evidence. It is likely that Encosta de Lago was the first of the horses from places besides Japan to be infected, although it may be that Fox & Furkin was infected earlier or at about the same time. There were only 2 stalls separating Encosta de Lago and Rock of Gibraltar, while Stravinsky was in the same row, but further away.<sup>82</sup> Fox & Furkin was in a separate row, but was in a stall almost directly opposite that occupied by Rock of Gibraltar.<sup>83</sup> Dr. Newton's opinion is that there may have been a transmission of the disease directly (via aerosolised droplets) from either Rock of Gibraltar or Stravinski (with the former being by far the more likely candidate) to Encosta de Lago and/or Fox & Furkin.<sup>84</sup> However, Dr. Newton made it plain that the mechanism of transmission was not obvious, and that (although less likely) it was possible that the virus was transmitted to Encosta de Lago and/or Fox & Furkin by means of physical contamination (fomites) via

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<sup>74</sup> WIT.AAHL.001.0245; AHT.0001.001.0012 – 0013 (Dr. Newton).

<sup>75</sup> AHT.0001.001.0012 – 0013 (Dr. Newton); T4177.31 (Dr. Newton).

<sup>76</sup> AHT.0001.001.0012 (Dr. Newton).

<sup>77</sup> WIT.AAHL.001.0246, 0247; AHT.0001.001.0010 – 0011 (Dr. Newton).

<sup>78</sup> AHT.0001.001.0011 (Dr. Newton).

<sup>79</sup> WIT.AAHL.001.0246; AHT.0001.001.0010 – 0011 (Dr. Newton).

<sup>80</sup> WIT.AAHL.001.0245, 0247, 0249; AHT.0001.001.0010 – 0013 (Dr. Newton).

<sup>81</sup> AHT.0001.001.0010 (Dr. Newton).

<sup>82</sup> AQIS.1000.002.0055 (Stall Plan).

<sup>83</sup> AQIS.1000.002.0055 (Stall Plan).

<sup>84</sup> AHT.0001.001.0014 – 0015 (Dr. Newton); T4180.9 – 4181.16, T4208.23 (Dr. Newton).

equipment or handling by grooms or other persons.<sup>85</sup> There is no reason to disagree with Dr. Newton's opinion on these matters.

33. Thereafter, the virus spread to the other horses within ECQS mentioned above. On the evidence, horse-to-horse transmission is the most likely means by which the virus was transmitted, but physical contamination (fomites) is a real possibility, as is a combination of the two. One opportunity for an inadvertent physical transfer of fomites to occur was on 14 August 2007, when Mr. Hinze (farrier) worked on all of the Coolmore horses in Row E, including Rock of Gibraltar and Encosta de Lago.<sup>86</sup>

#### **Transmission of the virus to the general horse population**

34. There are various possible means by which the equine influenza virus might theoretically have been transmitted to the general horse population of NSW and Queensland in August 2007. However, it is quite unnecessary to speculate about alternative possibilities when there is ample evidence that the virus was present in the horses which arrived from Japan on 8 August 2007, and was present within ECQS during the following days and weeks. It is surely no coincidence that the virus appeared in the general horse population less than 2 weeks after 8 August.
35. The notion that the August 2007 outbreak of equine influenza in the general horse population did not originate (directly or indirectly) from either the horses imported from Japan on 8 August or from one of the two quarantine stations in which they were held is fanciful. There is no evidence that an alternative source of the virus was present in Australia and there is no reason to think that, although the virus had not previously managed to enter this country, it happened to do so on two separate occasions during August 2007.
36. The fact that no horses within the general horse population of Victoria are known to have been infected with the virus, coupled with evidence indicating that persons and vehicles having contact with the "Japanese horses" taken to SQS did not subsequently have contact with infected horses, makes it quite unlikely that the equine influenza virus entered the general horse population of NSW and Queensland from Tullamarine Airport, or SQS, or via persons who were present at those locations.
37. Accordingly, it is highly likely that the virus escaped into the general horse population by one of the following means:
- 37.1. From Sydney Kingsford-Smith Airport (**SKSA**) on 8 August (in the air or on persons or equipment);
  - 37.2. During transit between SKSA and ECQS on 8 August (in the air or via fomites);
  - 37.3. In one or more of the vehicles used to transport Snitzel, Rock of Gibraltar or Stravinsky on 8 August, or on the driver of such a vehicle; or

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<sup>85</sup> AHT.0001.001.0014 – 0015 (Dr. Newton); T4181.13 – 16 (Dr. Newton).

<sup>86</sup> WIT.COOL.007.0003 at [15].

- 37.4. From ECQS on or after 8 August (in the air or on persons or equipment or via dogs).
38. Each of these possibilities has been addressed by Counsel Assisting in [16.13] to [16.27] of their submissions. Those submissions are respectfully adopted, such that the Commission should find that the most likely means by which Equine Influenza entered the general horse population is via a contaminated person or equipment leaving ECQS and coming into contact with a horse in the general population. A finding to that effect is consistent with Dr. Gilkerson's opinion on this issue.<sup>87</sup>
39. The person or item of equipment in question has not been revealed by the evidence. That is not entirely surprising, especially given the transmission of the virus would have been imperceptible at the time and was no doubt inadvertent, and also given the potential consequences and publicity which await persons who may have been unwittingly involved in events which have had such drastic consequences.

#### **A failure of quarantine**

40. The outbreak would not have occurred had it not been for what Dr. Martin of BA described as "*a failure of quarantine*".<sup>88</sup> That failure was not a momentary lapse or a freak occurrence, but the almost inevitable result of years of inertia and muddling-through on the part of AQIS and BA, who failed to take positive steps to comprehensively assess the risks posed by the importation of horses, to formulate and impose biosecurity measures calculated to best manage those risks, or to ensure that the measures which were in place were actually being complied with in Australia and overseas. The evidence before the Commission reveals that the most basic of precautions (showering and disinfecting equipment before leaving a quarantine station) would probably have prevented the outbreak from occurring, yet a number of failures on the part of AQIS meant that such precautions were not observed.

#### **Circumstances contributing to the outbreak – Pre-Export Quarantine**

41. For the reasons outlined above, it is likely that the mares Orchard Oasis, Acoustics, Western World, Full of Laughter and Royal Successor were first infected with the Equine Influenza virus whilst undergoing PEQ at Northern Farm, and that those 5 mares were the source of the August 2007 outbreak of Equine Influenza in Australia.
42. How the virus entered or came to be present at Northern Farm is not known. Nonetheless, the evidence reveals that each of the following circumstances existed at the material time and contributed to the outbreak, in that they increased the risk that horses bound for Australia would be infected with Equine Influenza during PEQ (as occurred at Northern Farm), or that such an infection would not be detected prior to the horses' arrival in Australia (as occurred in August 2007):
- 42.1. Neither AQIS nor BA had ever formally analysed and considered what happens within any of the PEQ premises from the point of view of risk.

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<sup>87</sup> WIT.INQ.003.0018 – 0019 (Dr. Gilkerson – Supplementary Report).

<sup>88</sup> T2918.39 (Dr. Martin).

- 42.2. Neither AQIS nor BA had audited or inspected PEQ facilities for a number of years prior to the outbreak, or taken steps to determine whether PEQ facilities were in fact operating in compliance with Australian import conditions.
  - 42.3. AQIS relied on documents that were required to be completed at the conclusion of PEQ to ensure import conditions were complied with, but AQIS did not check (even on a random basis) that the matters certified in such documents were in fact correct. Further, the time at which such documents were presented to AQIS and the manner in which they were dealt with by AQIS thereafter meant they were not an effective means of reducing the risk that exotic diseases would be imported to Australia.
  - 42.4. The import conditions imposed by AQIS and formulated by BA did not stipulate that entrants to PEQ premises must be required to shower before entering, even though that is what good biosecurity requires.
  - 42.5. Although it has been known within AQIS and BA since 1995 that some commercially available vaccines for Equine Influenza are far less efficacious than others, the import conditions imposed by AQIS and formulated by BA did not require that the more efficacious varieties be used.
  - 42.6. The import conditions imposed by AQIS and formulated by BA did not require that any form of testing for Equine Influenza be carried out during or at the conclusion of PEQ.
43. Each of those circumstances and the evidence relating to them will now be addressed in more detail.

#### No formal risk analysis of PEQ

44. Neither AQIS nor Biosecurity Australia has ever undertaken a formal risk analysis, structured investigation or hazard analysis concerning the importation of live horses so as to comprehensively identify the risks associated with such importation and to prescribe biosecurity measures to adequately address those risks during PEQ.<sup>89</sup> There has been no attempt to formally analyse and consider what happens within any of the PEQ premises from the point of view of risk.<sup>90</sup> This is so, even though Dr. Martin (General Manager of the Animal Biosecurity Branch of BA, who has been involved in the formulation and implementation of horse import policies since 1996 and has been managing the area of BA which deals with horse imports for over 7 years),<sup>91</sup> agreed that, in order to properly address biosecurity risks in PEQ, the logical first step would be to find out what happened in those facilities.<sup>92</sup> No satisfactory explanation was given for why that logical first step was not taken.
45. Nor was any risk analysis undertaken at the time an application was made for an Import Permit. Dr. Brown (Senior Veterinary Officer, AQIS, whose duties include issuing Import Permits) gave evidence that, when she considers an application for an

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<sup>89</sup> T2897.18 – 26, 2898.12 – 21, 2930.16 – 2930.24, 2927.22 – 38 (Dr. Martin); T2649.23 – 44 (Dr. Brown); T3307.24 – 46 (Dr. Nunn).

<sup>90</sup> T2931.20 (Dr. Martin).

<sup>91</sup> T2892.29 – 2893.16 (Dr. Martin).

<sup>92</sup> T2930.16 – 40 (Dr. Martin).

Import Permit, she does not make any independent assessment herself.<sup>93</sup> Rather, Dr. Brown simply approves the application subject to the conditions which have previously been formulated by BA for the relevant part of the world.<sup>94</sup>

No regular inspections or audits of PEQ premises

46. As at August 2007:

- 46.1. There were no regular audits or inspections by AQIS or BA of PEQ facilities;<sup>95</sup>
- 46.2. Apart from 2 premises in the UK which Dr. Brown visited in her own time and at her own expense during 2005, AQIS had not visited or inspected (let alone audited) a single PEQ facility since 2001;<sup>96</sup>
- 46.3. The visits or inspections which occurred in 2001 were prompted by an exceptional event; namely, an outbreak of foot-and-mouth disease in the United Kingdom, and it is not clear they were audits;<sup>97</sup>
- 46.4. AQIS prescribed certain conditions for PEQ facilities, but AQIS did not investigate or ensure that those conditions were complied with by those facilities;<sup>98</sup>
- 46.5. For a number of years, AQIS had not done anything to determine whether PEQ facilities were operating in the way they were meant to operate;<sup>99</sup> and
- 46.6. AQIS did not know whether the competent authorities in other countries were conducting audits of PEQ premises.<sup>100</sup>

47. Such incuriosity represented a marked shift from the practice that was followed up to the early 1990s, when AQIS vets were required to attend and inspect each PEQ facility prior to embarkation to ensure compliance with Australian import conditions, and then accompany each consignment of horses to Australia.<sup>101</sup> Indeed, the situation prior to August 2007 could not be more different than that which Ms Cushing described as the practice in the 1980s:<sup>102</sup>

*"[An AQIS vet] always came [to the PEQ facility] for the last week of quarantine. ...*

*They would come and visit the quarantine site and see that everything was being run and had been run as it should be, and then they would witness the loading of the horses and ride with us to the airport. ...*

*They would [ask questions and] want to know if there had been any sick horses and how everything had gone."*

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<sup>93</sup> T2617.26, 2649.17 – 21 (Dr. Brown).

<sup>94</sup> T2617.23, 2650.14 – 2651.13, 2651.37 (Dr. Brown).

<sup>95</sup> T346.6 (Ironside); T1046.46 – 1047.1 (Dr. Widders); T2931.9 – 24 (Dr. Martin); WIT.AQIS.014.0013 at [64] (Dr. Brown); T2601.25, 2627.11 (Dr. Brown).

<sup>96</sup> T229.25 – 47 (Gordon); T346.8 – 21 (Ironside); T1047.1, 1174.23 – 39 (Dr. Widders);

WIT.AQIS.014.0009 at [41] (Dr. Brown); T2601.32, 2627.21 - (Dr. Brown).

<sup>97</sup> WIT.DAFF.002.0008 at [61] (Ironside); T346.14 (Ironside); T1174.9 – 21 (Dr. Widders); T2931.9 – 24 (Dr. Martin); WIT.AQIS.014.0009 at [40] (Dr. Brown); T2601.7 – 17, 2627.26 – 33 (Dr. Brown).

<sup>98</sup> T346.34 – 42, 347.13 (Ironside).

<sup>99</sup> T348.44 – 349.1 (Ironside).

<sup>100</sup> T2625.46 (Dr. Brown).

<sup>101</sup> WIT.IRT.003.0004 at [13] (Cushing); T1494.6 – 1495.2, 1540.18 – 24 (Cushing);

WIT.PME.001.0002 at [10] – 0004 [19], 0021 – 0026 (Dr. Ellis); T2992.40 – 2993.21, 2997.4 – 2998.29 (Dr. Ellis); T2930.42 – 2931.7 (Dr. Martin).

<sup>102</sup> T1494.17, 1494.41 – 1495.2 (Cushing).

48. While there are now more horses being imported, such that one would not expect that practice to be followed by AQIS in relation to every consignment, no explanation (besides lack of resources and faith in foreign government officials) was given for AQIS's failure to conduct a single audit or inspection over a period of some 6 years, or for the absence of any system of regular audits of PEQ premises.
49. The prior practice described by Ms Cushing and Dr. Ellis demonstrates that there is no particular impediment to AQIS auditing or checking PEQ facilities on a regular or random basis to determine whether they are complying with the prescribed biosecurity measures and to assess for itself any special risks associated with each facility. Mr. Ironside acknowledged it could be done, so long as he had more staff.<sup>103</sup> Dr. Brown likewise said it could be done if adequate resources were made available.<sup>104</sup> Indeed, the interim conditions that were imposed after the August 2007 outbreak introduced a requirement that, in respect of PEQ premises:<sup>105</sup> *"All operations and procedures are documented and consistent with a HACCP approach. AQIS may audit approved PEQ premises."* Dr. Martin agreed that periodic audits of PEQ facilities would be useful.<sup>106</sup>

#### Reliance on documents that were presented after arrival in Australia

50. AQIS relied on documents that were required to be completed at or near the conclusion of PEQ to ensure import conditions were complied with, but in that regard AQIS simply assumed that the matters stated in the documents were correct, and did not conduct any audit or check to determine whether those matters were in fact correct.<sup>107</sup> Mr. Ironside conceded that, for a number of years, AQIS had not done anything to determine whether PEQ facilities were operating in the way they were meant to operate.<sup>108</sup> It is entirely possible that there exists a Northern Hemisphere version of ECQS (where staff are not aware of work instructions and basic biosecurity procedures are not complied with), but AQIS would never know.<sup>109</sup>
51. Further, the time at which documents such as health certificates were presented to AQIS and the manner in which AQIS dealt with such documents meant they were not an effective means of reducing the risk that exotic diseases would be imported to Australia. In particular:
- 51.1. Dr. Hee Song (an AQIS vet with responsibility for clearing horses at SKSA) gave evidence that, although it is on the AQIS intranet, he usually does not obtain a copy of the import permit (save for the first page).<sup>110</sup> He agreed this meant he usually did not know, prior to attending an aircraft at SKSA, how many horses were permitted to enter under the country under the relevant

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<sup>103</sup> T348.22 – 36 (Ironside).

<sup>104</sup> T2624.7 (Dr. Brown).

<sup>105</sup> DAFF.1000.006.0274.

<sup>106</sup> T2960.12 (Dr. Martin).

<sup>107</sup> T346.23 – 348.2 (Ironside); T1178.4 – 25 (Dr. Widders).

<sup>108</sup> T348.44 – 349.1 (Ironside).

<sup>109</sup> T1178.10 – 25 (Dr. Widders).

<sup>110</sup> WIT.AQIS.005.0002 at [8] (Dr. Hee Song); T676.30 (Dr. Hee Song).

import permit.<sup>111</sup> He also said that, although it would be possible to do so, AQIS does not check, prior to horses arriving in Australia, whether each horse carried on a particular aircraft has been issued an import permit.<sup>112</sup> He agreed AQIS should check to confirm that is so, and that there was no good reason not to check, apart from time.<sup>113</sup> At the time of the outbreak, therefore, it was entirely possible for a horse to enter Australia without an import permit and for AQIS to be unaware of that fact until after the horse had left the airport and spent a few days at the quarantine station.

- 51.2. The health certificates and other documents were not presented to AQIS until after the horses had arrived in Australia, and they were not examined at the airport or otherwise reviewed by AQIS until up to 5 days after the horses had entered a PAQ facility.<sup>114</sup> Dr. Hee Song said that, while at the airport, he merely counts the number of certificates and briefly checks the identity of the horses, such that it is possible that AQIS will not discover that a horse has not been appropriately vaccinated until it has spent time at the quarantine station.<sup>115</sup> As Dr. Brown conceded, there could be non-compliance in relation to any of the import conditions which is not discovered until after the horse arrives in Australia.<sup>116</sup>
- 51.3. The evidence before the Commission – which only examined a small number of consignments – demonstrated that, even once the health certificates are reviewed, AQIS staff either did not pick up or ignored obvious irregularities. For example, the health certificate in relation to Elusive Quality purported to certify that things had occurred on dates after the date on which the certificate was signed.<sup>117</sup> Dr. Hee Song agreed that was not regular and not acceptable.<sup>118</sup> He said that someone at AQIS's office would have looked at that health certificate.<sup>119</sup> Yet there is no evidence that irregularity was picked up or investigated by AQIS, the subsequent outbreak notwithstanding. Indeed, Dr. Brown looked at Elusive Quality's health certificate after the outbreak, and even then she did not pick up that certain things could not have occurred at the time of certification.<sup>120</sup>
- 51.4. For some time, horses imported from the UK have been allowed to enter Australia without certain laboratory test results being attached, in breach of one of the applicable import conditions.<sup>121</sup> Dr. Widders expressed the view to Dr. Brown that AQIS should get copies of such reports, and Dr. Chubb of BA

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<sup>111</sup> T676.36 – 93 (Dr. Hee Song).

<sup>112</sup> T677.1 – 9 (Dr. Hee Song).

<sup>113</sup> T677.11 – 678.11 (Dr. Hee Song).

<sup>114</sup> WIT.AQIS.005.0002 at [13] (Dr. Hee Song); T615.1 – 33 (Dr. Hee Song); T1026.11 – 27, 1028.1 (Dr. Widders).

<sup>115</sup> 615.15 – 33, 624.1 (Dr. Hee Song).

<sup>116</sup> T2655.23 (Dr. Brown).

<sup>117</sup> AQIS.1000.028.0025; T621.29 – 622.34 (Dr. Hee Song).

<sup>118</sup> T622.46 – 623.2 (Dr. Hee Song).

<sup>119</sup> T623.40 (Dr. Hee Song).

<sup>120</sup> T2704.35 – 44 (Dr. Brown).

<sup>121</sup> T1175.22 – 1176.22 (Dr. Widders).

agreed with Dr. Widders.<sup>122</sup> Dr. Widders said that Dr. Brown told him that AQIS would accept UK health certificates without the lab reports.<sup>123</sup> Dr. Brown's evidence was that she had raised the matter with the relevant department in the UK, that they were offended, but that she understood they would begin supplying the lab reports.<sup>124</sup> Dr. Brown then conceded that she had not taken any steps subsequently to check whether the lab reports were accompanying horses from the UK, and that she now knows that they were not.<sup>125</sup> According to Dr. Brown, although AQIS employs people to check health certificates to ensure they comply with the import conditions, during the entire period from August 2005 to August 2007, no-one at AQIS flagged that the UK authorities were still not attaching the requisite lab reports.<sup>126</sup>

- 51.5. Moreover, there are reasons to doubt that AQIS takes the content of the health certificates as seriously as it should. In her evidence, Dr. Brown asserted that Elusive Quality's health certificate "*doesn't have a very major discrepancy in it*".<sup>127</sup> She thought there was "*no reason to doubt that the treatment was undertaken*",<sup>128</sup> even though, on the face of the certificate, the treatment could not have occurred when the certificate was signed.

#### No requirement to shower-in to PEQ

52. Although one of the purposes of PEQ is to keep diseases out of the quarantine station,<sup>129</sup> and notwithstanding most horses undergo PEQ in countries where Equine Influenza is endemic,<sup>130</sup> the import conditions imposed by AQIS and formulated by BA did not stipulate that entrants to PEQ premises must shower before entering.<sup>131</sup>
53. Dr. Martin conceded that Equine Influenza could get inside a PEQ facility on the clothing or in the hair of a vet or farrier.<sup>132</sup> She also conceded that good biosecurity should require that entrants shower-in to PEQ premises.<sup>133</sup> When asked to explain why the AQIS/BA conditions did not include such a requirement, Dr. Martin offered: "*it was considered that by wearing protective clothing and washing hands, that would be adequate*".<sup>134</sup> She then said: "*It's not my opinion now*".<sup>135</sup> No reasons were given to justify her earlier opinion, and it is difficult to see how anyone with knowledge of the disease and how it spreads could have come to that view if they had actually addressed their mind to the risks involved.

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<sup>122</sup> WIT.AQIS.006.0072.

<sup>123</sup> T1176.17 – 26 (Dr. Widders).

<sup>124</sup> T2761.11 – 2764.40 (Dr. Brown).

<sup>125</sup> T2764.24, 2764.44 – 2765.6 (Dr. Brown).

<sup>126</sup> T2765.8 – 25 (Dr. Brown).

<sup>127</sup> T2703.41 (Dr. Brown).

<sup>128</sup> T2704.7 (Dr. Brown).

<sup>129</sup> T2914.24 (Dr. Martin); T2617.42 (Dr. Brown).

<sup>130</sup> T2914.33 (Dr. Martin).

<sup>131</sup> T2920.34 (Dr. Martin); T2620.11 (Dr. Brown).

<sup>132</sup> T2920.22 (Dr. Martin).

<sup>133</sup> T2920.31 (Dr. Martin).

<sup>134</sup> T2920.37 (Dr. Martin).

<sup>135</sup> T2920.44 (Dr. Martin).

54. Dr. Brown likewise conceded that Equine Influenza could get inside a PEQ facility on the clothing, in the hair or on the face or body of a vet or farrier.<sup>136</sup> She said it “*would seem wise*” to require that entrants shower-in to PEQ premises.<sup>137</sup>

#### No requirement to use more effective vaccines

55. Although it has been known within AQIS and BA since 1995 that some commercially available vaccines for Equine Influenza are far less effective than others,<sup>138</sup> the import conditions imposed by AQIS and formulated by BA did not require that the more efficacious varieties be used. There was no practical or commercial reason why the conditions could not stipulate specific commercially available vaccines which have been approved by BA.<sup>139</sup>
56. When pressed to explain why BA did not recommend that the more effective vaccines be used, Dr. Martin said: “*I can’t give you a reason why, but it wasn’t done*”.<sup>140</sup> Such inactivity is to be contrasted with the approach to the problem that was taken by the Hong Kong Jockey Club, which did specify which strains of the virus must be contained within vaccines.<sup>141</sup>
57. This is a matter of no little importance, given that the virus was able to be transmitted between several horses within the quarantine system, all of which had apparently been vaccinated against Equine Influenza. Plainly, those vaccinations had minimal effect in preventing a disease of quarantine concern from entering Australia.
58. Not only did the import conditions imposed by AQIS and formulated by BA not require that the more effective vaccines be used, but AQIS did not know what vaccines actually satisfied the import condition which was imposed (i.e., that the vaccine be “*approved*”).<sup>142</sup> There was no list of vaccines approved by DAFF, AQIS or BA; nor was there a list of vaccines approved by the certifying authorities of other countries.<sup>143</sup> Just how an AQIS employee reviewing an import permit or health certificate would pick up that a horse had not been vaccinated using an “*approved*” vaccine was never explained. It seems clear AQIS wouldn’t know one way or another: “*We rely on the certifying authority to certify that they are vaccinating with appropriate vaccines*”.<sup>144</sup>

#### No requirement to test for Equine Influenza during PEQ

59. The import conditions imposed by AQIS and formulated by BA did not require that any form of testing for Equine Influenza be carried out during or at the conclusion of PEQ. In 1995, Dr. Powell of the Gluck Equine Research Centre told AQIS that he strongly advocated the use of Directigen as a means of screening horses for Equine Influenza

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<sup>136</sup> T2619.32 – 46 (Dr. Brown).

<sup>137</sup> T2620.35 (Dr. Brown).

<sup>138</sup> T2903.34 – 45, 2906.30 – 2907.27 (Dr. Martin); DAFF.0001.091.0357.

<sup>139</sup> T2616.7 (Dr. Brown).

<sup>140</sup> T2904.44 (Dr. Martin). See also: T2907.34 – 2910.36 (Dr. Martin).

<sup>141</sup> WIT.HKJC.001.0003 at [7], 0004 [10(g), 10(h)].

<sup>142</sup> T2605.24 (Dr. Brown).

<sup>143</sup> 2604.41 – 2605.38 (Dr. Brown).

<sup>144</sup> T2606.19 (Dr. Brown). See also: T2609.28 (Dr. Brown).

in PEQ and PAQ.<sup>145</sup> The matter was apparently “*under review*” within AQIS or BA for some years (principally in relation to PAQ), but nothing was done to implement Dr. Powell’s recommendation.<sup>146</sup> However, within weeks of the August 2007 outbreak, BA had sprung into action and formulated interim conditions requiring that either a PCR or antigen ELISA test for Equine Influenza be conducted twice with negative results during PEQ, with the second being taken within 4 days of departure.<sup>147</sup> The antigen ELISA test had been around since the late 1990s, but it took an outbreak in 2007 for BA to decide it could be used.<sup>148</sup>

### Conclusions regarding PEQ

60. Mr. Hunter, the Deputy Secretary of DAFF and the Executive Director of AQIS, gave evidence that independent reviews of quarantine policy:<sup>149</sup>

*“...have consistently endorsed an approach of managing risk where possible (within resourcing and logistical constraints) by undertaking as much mitigation as possible pre-border – that is, by addressing the risk before the commodity reaches Australia...”*

Mr. Ironside, then National Manager of the Live Animal Import Program and the Post-Entry Animal Quarantine Program, likewise spoke of:<sup>150</sup>

*“Australia’s strategy of reducing quarantine risk by managing quarantine risks offshore wherever possible.”*

Ms Gordon referred to an approach whereby arrangements were put in place “*to keep the risks offshore... in the country of origin of the horses*”, to the extent possible.<sup>151</sup>

61. In August 2007, the reality was very different. AQIS was not “*undertaking as much mitigation as possible pre-border*” or actively “*managing risks offshore*”. Instead, a series of virtually identical conditions, which had been developed without the benefit of a comprehensive risk or hazard analysis, were routinely imposed on all horse imports. AQIS conducted no audits of any kind to ascertain whether those conditions were being complied with in PEQ facilities. The conditions themselves were not sufficiently robust to minimise the risk that Equine Influenza would be imported to Australia, and both AQIS and BA were curiously hesitant to improve them. Further, none of the paperwork certifying compliance with the conditions was examined until after potentially infected horses had arrived in Australia. The so-called “*strategy*” was bound to fail.

### **Circumstances contributing to the outbreak – Post-Arrival Quarantine at ECQS**

62. As noted above, it is likely that Equine Influenza entered the general horse population by means of a contaminated person or equipment leaving ECQS and coming into contact with a horse in the general population.

<sup>145</sup> DAFF.INQ.009.0001; T2911.9 (Dr. Martin).

<sup>146</sup> T2911.9 – 2193.26, 2915.32 (Dr. Martin).

<sup>147</sup> DAFF.1000.006.0269.

<sup>148</sup> T2916.35 (Dr. Martin).

<sup>149</sup> WIT.DAFF.001.0012-0013 at [55].

<sup>150</sup> WIT.DAFF.002.0007 at [47].

<sup>151</sup> T136.25 – 37 (Gordon). See also: T137.13 – 20, 146.31 – 37 (Gordon).

63. The most basic of precautions (showering, changing clothes and disinfecting equipment before leaving ECQS) would probably have prevented the outbreak from occurring. Counsel Assisting have rightly submitted that the fact that such precautions were not being implemented within ECQS in August 2007 was a serious failure on the part of those within DAFF and AQIS who were responsible for the management of quarantine risks and in particular the management of PAQ.<sup>152</sup>
64. Far from being the fault of a rogue individual, the result of a momentary lapse or a freak occurrence, the escape of the virus from ECQS in August 2007 was the almost inevitable result of the following circumstances:
- 64.1. AQIS was unjustifiably complacent about the risk of Equine Influenza being disseminated in Australia and wrongly assumed that the risk had essentially been addressed by PEQ.
- 64.2. Neither AQIS nor BA had ever undertaken a formal risk assessment or hazard analysis of the operations at ECQS so as to comprehensively identify the risks associated with those operations and to prescribe biosecurity measures to adequately address those risks during PAQ.
- 64.3. The Work Instruction which had been prepared and issued by AQIS in 2004 was not intended to deal exhaustively with the procedures to be implemented at ECQS. Further, an Operations Manual for Horses was never finalised.
- 64.4. The management and staff of ECQS did not understand that there were any work instructions or operational procedures relating to horses which they were required to follow at the quarantine station.
- 64.5. The national managers with responsibility for ECQS never audited or checked that work instructions or operational procedures (including requirements to shower, change clothes and disinfect equipment) were being implemented at the quarantine station.
- 64.6. The management and staff of ECQS did not ensure that vets, farriers, grooms or other persons showered, changed their clothes and disinfected any equipment before leaving the quarantine station. Access to and egress from ECQS by vets, farriers, grooms and other persons was not adequately monitored or controlled. There was no attempt to comply with the Work Instruction or the Operations Manual.
- 64.7. ECQS was under-staffed. Moreover, staffing and funding levels were determined:
- (a) by people who had no knowledge of the day-to-day biosecurity measures which staff at ECQS were required to perform; and
- (b) on the assumption that existing resources were sufficient to perform those functions, barring a substantial increase in animal numbers.
- Priority was given to the preparation of business plans and other such documents in preference to finalising the Operations Manual and checking that staff within ECQS were ensuring compliance with biosecurity procedures that were essential to prevent the spread of disease.

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<sup>152</sup> At [16.29].

- 64.8. AQIS and BA failed to reconsider or adjust the procedures or operations at ECQS to take account of recent developments overseas, such as the outbreak in South Africa in late 2003.
65. Each of those circumstances and the evidence relating to them will now be addressed in more detail.

#### Complacency & reliance on PEQ

66. Following the August 2007 outbreak, Dr. Nunn (BA's Principal Scientist, Animal Biosecurity) prepared a preliminary report regarding certain biosecurity arrangements at ECQS.<sup>153</sup> In that report, Dr. Nunn said:

*"The fundamental premise that underpins PAQ of animals is that all procedures should be based on the assumption that imported animals may be infected with an exotic agent of concern and must be managed as if they are infected until they have concluded the prescribed PAQ. ...PAQ procedures at the quarantine station should be consistent with what is required if they were infected with EI virus."*

67. That was not the fundamental premise which underpinned PAQ prior to the outbreak. Ms Gordon (an Executive Manager, Quarantine, of AQIS, who held senior positions with managerial responsibility for animal programs for several years prior to the outbreak) articulated the basis on which PAQ arrangements were formulated prior to August 2007 as follows:<sup>154</sup>

*"...until August 2007, the management of risks for horses, and particularly the issue of equine influenza, basically worked around arrangements that we called the continuum of quarantine, which requires us to consider, to the extent we possibly can, putting in place arrangements to keep the risks offshore.*

*So what we did was to develop... conditions on import permits that required the risks to be managed, to the extent possible in the country of origin... and through a series of layered progressive measures to address the residual risks on arrival in Australia.*

*...The arrangements that we had in place for managing horses after arrival in Australia took into account the fact that it was understood that the measures for pre-export management of horses would actually address the risk of equine influenza.*

*...[PAQ measures were put in place] on the basis that the risk had largely been taken care of prior to the horses arriving in Australia."*

68. Ms Gordon did not accept that the understanding which she outlined as having formed the basis of PAQ was inconsistent with Dr. Nunn's "fundamental premise".<sup>155</sup> However, the Commission should find that they are quite different. What Ms Gordon described was a PAQ regime premised on the notion that the risk of Equine Influenza had been largely "taken care of" overseas; whereas Dr. Nunn's view affords no role for such an assumption in PAQ. Rather, horses "must be managed as if they are infected" and "PAQ procedures at the quarantine station should be consistent with what is required if they were infected with EI virus".

<sup>153</sup> AQIS.0002.014.0504.

<sup>154</sup> T136.25 – 137.26, 146.34 – 37 (Gordon) (emphasis added). See also: T164.22 – 39 (Gordon).

<sup>155</sup> T196.1 – 197.25 (Gordon).

69. A concrete example of the assumption that the risk of equine influenza would be largely *“taken care of”* overseas in operation is provided by the reasoning embodied in the Live Animal Imports Review that was carried out by AQIS in late 2003 and disseminated in 2004. At a time when South Africa had just experienced an outbreak of equine influenza that was *“most probably transmitted from the imported horses to South African horses by indirect means (on persons, vehicles or equipment)”*,<sup>156</sup> AQIS was expressing the view that:<sup>157</sup>

*“Based on a long history of imports, AQIS has confidence that the certifying authorities would not export a consignment of horses which were not healthy in the export country.”*

That confidence was unwarranted in light of the historical record, and incompatible with Dr. Nunn’s fundamental premise. Yet, that confidence informed the reasoning which led AQIS to recommend that private veterinarians (rather than AQIS VO’s) conduct examinations and take blood samples from horses at the commencement of PAQ.<sup>158</sup> That recommendation would inevitably lead to more people requiring access to and coming into contact with horses during quarantine. Moreover, private vets pose a high risk of spreading disease because they are likely to have regular contact with the general horse population. Dr. O’Callaghan said that it was believed a private veterinarian was responsible for transmitting the Equine Influenza virus to the general horse population of South Africa in 1986, and thus causing an outbreak.<sup>159</sup>

70. The assumption that the risk of equine influenza would be adequately managed by PEQ measures has been proved wrong, as Ms Gordon admitted.<sup>160</sup>

#### No formal risk assessment or hazard analysis pertaining to ECQS

71. One of the most telling features of the evidence is the difference that it reveals between the practices followed at ECQS on the one hand and the procedures that have been designed for and are implemented at the PAQ facility operated by Racing Victoria Limited at Sandown (**Sandown**). The latter were specially formulated by experts following a formal Hazard Analysis Critical Control Point (**HACCP**) analysis, the purpose of which was:<sup>161</sup>

*“...to conduct a hazard analysis of risks at each step of the quarantine management program for international horses..., identify critical control points where hazards may occur and develop control, monitoring, corrective action, documentation and verification procedures to minimise any possible risk from exotic diseases of horses...”*

72. The product of that analysis includes, for example, an explicit identification of the risk that Equine Influenza will be transmitted as a result of veterinary examinations, as well as the formulation of specific control mechanisms targeting that risk, including a

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<sup>156</sup> EII.0001.001.0212 (King Report).

<sup>157</sup> DAFF.0001.069.2323.

<sup>158</sup> DAFF.0001.069.2323 – 2324; T3446.31 (Dr. Clegg).

<sup>159</sup> T2878.8 – 2897.26 (Dr. O’Callaghan).

<sup>160</sup> T166.28 (Gordon).

<sup>161</sup> AQIS.1000.007.0006.

requirement that vets only be permitted entry in exceptional circumstances and that they observe decontamination procedures.<sup>162</sup> Detailed operating procedures were also developed for veterinarians and farriers attending Sandown.<sup>163</sup> The procedures for vets expressly require, inter alia, that:

- 72.1. Vets will not be permitted to enter Sandown without an access card;
  - 72.2. Vets can only access Sandown via the security hut (which is manned at all times by a security guard);
  - 72.3. Before attending upon a horse, vets must change their clothing within a designated area that is under 24 hour video surveillance;
  - 72.4. If a horse is found to have an increased temperature, is coughing or if there is nasal discharge, that must be immediately reported to a quarantine veterinarian;
  - 72.5. Details of each visit must be recorded on the Veterinary Visit Sheet outside each stable;
  - 72.6. Vets must shower before returning to the changing area;
  - 72.7. Vets cannot leave without signing the exit log in the presence of the security guard; and
  - 72.8. No item of equipment may be taken out of Sandown without permission.
73. Further, the Sandown procedures provide that a "Monitor Log" must be completed by Security Guards, Grooms and Quarantine Officers, and then verified by a Quarantine Officer.<sup>164</sup> At least one comprehensive internal audit of the whole HACCP system must be carried out during each quarantine period.<sup>165</sup>
74. No HACCP or similar risk analysis has ever been undertaken in relation to ECQS or SKSA.<sup>166</sup>
75. Ms Gordon could not explain why it was that, although a HACCP analysis had been carried out in relation to Sandown, no equivalent risk analysis had ever been undertaken in relation to ECQS.<sup>167</sup>
76. Dr. Martin agreed that BA had not informed itself at all of what happens in PAQ.<sup>168</sup> She said that "*the standard operating procedures, the detail of what should be done, was an AQIS role*".<sup>169</sup> So far as she was aware, as at August 2007, BA had never been asked to consider what operational procedures and arrangements should be in place at ECQS, SQS, SKSA or Tullamarine.<sup>170</sup> Dr. Martin conceded that BA could have identified the relevant risks at those locations, AQIS could have proposed certain controls, and BA could have assessed whether those controls were

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<sup>162</sup> AQIS.1000.007.0017.

<sup>163</sup> AQIS.1000.007.0034 – 0037, 0042 – 0043.

<sup>164</sup> AQIS.1000.007.0025, 0058, 0059.

<sup>165</sup> AQIS.1000.007.0025, 0057, 0070.

<sup>166</sup> T145.1 – 10 (Gordon); T297.33 – 43 (Ironside); T3285.38 – 3286.6, 3293.16, 3305.1 – 16 (Dr. Nunn).

<sup>167</sup> T145.12 – 18 (Dr. Martin).

<sup>168</sup> T2930.40 (Dr. Martin).

<sup>169</sup> T2939.42 (Dr. Martin).

<sup>170</sup> T2939.45 – 2940.9 (Dr. Martin). See also: T3296.13 – 3297.17, 3305.1 – 16 (Dr. Nunn).

sufficient.<sup>171</sup> The only reason she could give as to why that had never occurred was “that operational side was managed solely by AQIS”.<sup>172</sup>

A deficient Work Instruction & a draft Operations Manual

77. The Work Instruction “Clearance of Live Horses” (**Work Instruction**) was distributed in May 2004.<sup>173</sup> Dr. Widders’ view was that the Work Instruction was deficient, specifically in relation to operations at SKSA (including the lack of any requirement to shower after contact with horses) and managing the air stalls.<sup>174</sup> He made the point that the Work Instruction was largely drafted by people who had not witnessed or were not aware of the process by which animals were cleared.<sup>175</sup> He had held those views since May 2004, and had made them known to the National Managers.<sup>176</sup>
78. The Work Instruction was never revised. Despite the fact that Dr. Widders was directly involved and had much experience in the clearance of live horses, it does not appear that any of his superiors took his concerns seriously.<sup>177</sup>
79. Dr. Widders also accepted that the Work Instruction did not really address what was to happen in relation to vets and farriers visiting ECQS after hours.<sup>178</sup> Indeed, the Work Instruction was never intended to deal comprehensively with day-to-day operations relating to horses at ECQS.<sup>179</sup> That function was to be fulfilled by a separate document, known as the “Operations Manual for Horses at Government Post Arrival Quarantine Station” (**Operations Manual**).<sup>180</sup> The Operations Manual had been drafted by Ms Oakes and her draft was disseminated in March 2004. At a meeting in May 2004, Dr. Hibbert advised that the Operations Manual would be redrafted and then distributed for comment.<sup>181</sup> However, nothing appears to have been done to finalise the Operations Manual for the next 3½ years, and the Operations Manual remained a draft document in August 2007.<sup>182</sup>
80. AQIS was well aware of this problem. The documentation and implementation of standard work procedures for horses in PAQ was listed as a “milestone” in the PEAQ Program’s Business Plan for 2005/6, and was to be achieved by August 2005.<sup>183</sup> Yet

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<sup>171</sup> T2941.29 (Dr. Martin).

<sup>172</sup> T2941.33 (Dr. Martin).

<sup>173</sup> AQIS.0001.001.0011; T3358.30 (Dr. Clegg).

<sup>174</sup> T976.36 – 977.1, 977.41 – 978.13 (Dr. Widders); DAFF.1001.004.0258 – 0275 (Dr. Widders’ comments on the Work Instruction); DAFF.0001.069.2449 – 2459 (Dr. Widders’ comments on the LAI Review).

<sup>175</sup> T993.38 (Dr. Widders).

<sup>176</sup> T978.29 – 979.26, 1002.22 – 1003.27 (Dr. Widders); WIT.AQIS.006.0010 at [34] (Dr. Widders).

<sup>177</sup> T1004.31 – 1005.25 (Dr. Widders).

<sup>178</sup> T988.35 – 41 (Dr. Widders). At the time Dr. Widders commented on the draft Work Instruction in October 2004, he was not responsible for ECQS and it was possibly for that reason that he did not comment on that aspect of the document: T988.43 – 989.10 (Dr. Widders).

<sup>179</sup> T3362.32 (Dr. Clegg).

<sup>180</sup> AQIS.0001.001.0080.

<sup>181</sup> WIT.AQIS.006.0010 at [35] (Dr. Widders).

<sup>182</sup> T268.25, 276.46, 291.18 (Ironsides); WIT.AQIS.006.0010 at [35] (Dr. Widders); T1005.39 – 1006.4 (Dr. Widders).

<sup>183</sup> DAFF.0001.669.0007.

it still had not happened as at August 2007.<sup>184</sup> The same business plan referred to an audit of standard work procedures at the quarantine stations by March 2006. That never occurred.<sup>185</sup>

81. Dr. Clegg agreed the absence of documented procedures for the quarantine stations was unsatisfactory and hadn't been addressed for a number of years.<sup>186</sup> For Dr. Clegg "*another delay while other activities were taken up didn't seem to me to be a major issue*".<sup>187</sup> Mr. Ironside accepted that it was part of his responsibility to formulate and distribute operating procedures and work instructions.<sup>188</sup> No satisfactory explanation was given for why the Operations Manual was not finalised.
82. It took an outbreak of Equine Influenza to prompt AQIS to finalise the Operations Manual.<sup>189</sup> Based on AQIS's past performance, there is no reason to think it would have been attended to otherwise.

#### Management and staff of ECQS unaware of requirement to follow Work Instruction or Operations Manual

83. It was the evidence of Mr. Hankins (Manager of ECQS) that, in August 2007, he did not understand the Work Instruction had to be complied with at ECQS.<sup>190</sup> He did not believe it was a relevant document for a PAQ station, he was not at all familiar with its contents, and he had not read all of it.<sup>191</sup> Mr. Hankins' view, in August 2007, was that the Operations Manual was more relevant to ECQS, but that it did not have to be implemented or complied with because it was only a draft.<sup>192</sup> Therefore, immediately prior to the outbreak, the Manager of ECQS believed that neither the Work Instruction nor the Operations Manual had to be followed within ECQS.<sup>193</sup> Nor was there some other document relating to horses which Mr. Hankins believed had to be complied with at ECQS.<sup>194</sup>
84. That rather extraordinary position was not really the fault of Mr. Hankins, but of his superiors.
85. Mr. Hankins commenced his role as Manager of ECQS on 2 March 2007.<sup>195</sup> He had no experience working at a quarantine station prior to that time, and moreover had not worked with live animals before.<sup>196</sup> Ms Sims (Assistant Regional Manager, NSW, AQIS) – who had to agree to Mr. Hankins taking that position – said his appointment

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<sup>184</sup> T181.18 – 24 (Gordon); T278.16 – 39 (Ironside).

<sup>185</sup> T181.29 (Gordon); T255.14 (Ironside).

<sup>186</sup> T3386.20 – 29 (Dr. Clegg).

<sup>187</sup> T3386.30 (Dr. Clegg).

<sup>188</sup> T254.42 – 45 (Ironside).

<sup>189</sup> Mr. Ironside denied this: T279.23 (Ironside).

<sup>190</sup> T1909.26 – 43, 1923.33 (Hankins).

<sup>191</sup> T1909.45 – 1910.19, 1924.18 – 25, 2216.30 (Hankins).

<sup>192</sup> T1909.11, 1910.21 – 35, 1923.14 – 28, 1925.33, 1926.39, 2217.8 – 14 (Hankins).

<sup>193</sup> T1923.38 (Hankins).

<sup>194</sup> T2217.26, 2218.29 (Hankins).

<sup>195</sup> WIT.AQIS.012.0001 at [1] (Hankins).

<sup>196</sup> WIT.AQIS.012.0001 at [3] – [6] (Hankins).

was part of a “swap” between personnel within the NSW Region,<sup>197</sup> and that she made no enquiries as to whether Mr. Hankins had any experience in relation to live animals.<sup>198</sup> Astoundingly, Ms Sims did not think it might be relevant to consider whether the manager of Australia’s largest quarantine station for live animals had any experience in relation to live animals.<sup>199</sup>

86. Although ECQS is the principal animal quarantine station in Australia, the Live Animal Imports Program had no process or procedure in place to train or instruct a new Manager of ECQS in the operation of the station.<sup>200</sup> Mr. Hankins received a “handover” from his predecessor which lasted 1 day.<sup>201</sup> No biosecurity operations or procedures were discussed and Mr. Hankins received no other training or induction in relation to his role as station manager.<sup>202</sup>

87. Mr. Ironside claimed that the “day-to-day operation of the station is really a matter for the regions to manage themselves”.<sup>203</sup> However, any belief that Mr. Hankins had been trained or instructed in the day-to-day operations of ECQS by the NSW region must surely have been shattered in March 2007, when Mr. Hankins phoned Mr. Ironside to ask.<sup>204</sup>

*“Are there any work instructions or other instructional documents that relate to the clearance of animals or the management of animals at the quarantine station?”*

Indeed, according to Mr. Ironside, Mr. Hankins went on to say that “he had none available at the station” and that he had made inquiries of the people working at the station and “they said they hadn’t seen any”.<sup>205</sup>

88. Following that phone call, Mr. Ironside was plainly on notice that Mr. Hankins had not been adequately instructed on how to run ECQS. Yet all Mr. Ironside did was tell Mr. Hankins there were work instructions on the intranet and request Ms Lam to forward some other documents (including the Operations Manual).<sup>206</sup> There was no follow-up.<sup>207</sup> No further action was taken to ensure that Mr. Hankins understood what biosecurity and other procedures had to be followed at ECQS.

89. Moreover, as National Manager of Live Animal Imports, Mr. Ironside had reason to believe that, prior to March 2007, the staff at ECQS had not been complying with either the Work Instruction or the Operations Manual. Although Mr. Ironside denied

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<sup>197</sup> T405.13 – 20 (Sims).

<sup>198</sup> T407.5 (Sims).

<sup>199</sup> T407.10 (Sims).

<sup>200</sup> T257.29 – 258.12 (Ironside).

<sup>201</sup> T406.37 (Sims); T1904.46 (Hankins).

<sup>202</sup> WIT.AQIS.012.0005 at [24], [27] (Hankins).

<sup>203</sup> T258.6 (Ironside).

<sup>204</sup> T259.10 – 13 (Ironside). See also: WIT.AQIS.012.0007 at [37], 0008 at [38] (Hankins); T1933.9 – 39 (Hankins).

<sup>205</sup> T259.24 – 40 (Ironside); T2211.45 – 2212.3 (Hankins).

<sup>206</sup> T259.16 – 22, 259.47 – 260.9, 260.23 – 261.8 (Ironside); AQIS.INQ.001.0021 (email 4/4/07).

<sup>207</sup> T261.13, 267.31 – 47, 270.22 – 271.5, 319.31 – 321.9, 322.9 – 323.34 (Ironside).

this,<sup>208</sup> it is difficult to see how the staff could have been complying with instructions and procedures they “*hadn’t seen*”. At best, Mr. Ironside could not have been confident that the staff had been complying with those instructions or procedures.

90. It is not possible to say that the documents to which Mr. Ironside had referred in his phone call with Mr. Hankins were self-explanatory or unequivocal. Mr. Ironside himself confessed that he “*wasn’t sure*” at the time of “*the status*” of the draft Operations Manuals that he had asked Ms Lam to send.<sup>209</sup> He had those drafts sent, not to ensure that Mr. Hankins enforced compliance with them, but because.<sup>210</sup>

*“I felt that those, even if they weren’t finalised, would be useful to Greg as background documents or as providing some sort of guidance or instruction.”*

In Mr. Ironside’s words, the Operations Manual was a *draft document*” and staff “*weren’t technically required to follow it*”.<sup>211</sup> It is hardly surprising, therefore, that Mr. Hankins took the view that the draft Operations Manual was not binding.<sup>212</sup> That view appears to have been correct, and was surely encouraged by the email attaching them, which said they “*will be reviewed this year*”.<sup>213</sup>

91. Nor was Mr. Hankins likely to get much instruction on the day-to-day operation of ECQS from the NSW Region:

91.1. Mr. Turner (NSW Regional Manager) had no knowledge of the procedures which had been promulgated by the national program to apply at ECQS.<sup>214</sup>

91.2. Ms Sims did not see it as part of her responsibility to see that work instructions or operating procedures were implemented.<sup>215</sup> She had never looked at the content of the Work Instruction; nor did she know whether it was being implemented in NSW.<sup>216</sup> She thought that was Dr. Widders’ responsibility, but did not think she had a responsibility to see that Dr. Widders was ensuring that work instructions or operating procedures were being implemented.<sup>217</sup> As for training, Ms Sims’ view was that Mr. Hankins would have to ask for training before any would be provided.<sup>218</sup>

91.3. Dr. Widders said that he had responsibility for implementing work instructions or operating procedures relating to live animals in NSW, “*in concert*” with the National Program Manager.<sup>219</sup> However, as at August 2007, he “*hadn’t specifically asked*” the question whether the staff at ECQS were aware of the

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<sup>208</sup> T261.29 – 263.23 (Ironside).

<sup>209</sup> T268.24 – 35 (Ironside).

<sup>210</sup> T268.45 – 269.2 (Ironside) (emphasis added).

<sup>211</sup> T291.18 (Ironside).

<sup>212</sup> See: T322.40 (Ironside).

<sup>213</sup> AQIS.INQ.001.0021 (email 4/4/07).

<sup>214</sup> T3584.29 (Turner).

<sup>215</sup> T385.13 (Sims).

<sup>216</sup> T385.33 – 47, 398.39 – 399.15 (Sims).

<sup>217</sup> T399.12 (Sims).

<sup>218</sup> T408.1 – 13 (Sims).

<sup>219</sup> T974.31, 975.21, 975.43 (Dr. Widders).

content of the Work Instruction.<sup>220</sup> Dr. Widders agreed that, as at August 2007, he did not know whether the staff were aware of it.<sup>221</sup>

92. Mr. Holloway (AQIS Supervisor and second in charge at ECQS) had only commenced work at ECQS about 2 weeks prior to Mr. Hankins' arrival.<sup>222</sup> Like Mr. Hankins, he had no prior experience working at a quarantine station or with live animals undergoing quarantine.<sup>223</sup> He also received no training when he started at ECQS.<sup>224</sup> Mr. Holloway could not recall being aware of the Work Instruction at all prior to August 2007.<sup>225</sup> Although he was given a copy of the Operations Manual in about April 2007, he understood it was a draft that was still being developed.<sup>226</sup> Mr. Holloway did not believe that there was any document which prescribed, in a final or authoritative way, the procedures which had to be followed at ECQS in relation to horses.<sup>227</sup>
93. As for Ms Christesen, she did not receive or know about the existence of the Work Instruction until about April 2007.<sup>228</sup> Further, even when it was provided to her, she was not told that she had to follow it.<sup>229</sup> Instead, she was asked to comment on it.<sup>230</sup>

#### Failure to audit compliance with work instructions or operational procedures at ECQS

94. The purpose of an audit is to determine whether or not things are operating in the way they are meant to operate.<sup>231</sup> It was plainly useless having work instructions or operations manuals unless the staff responsible for implementing them were aware of their existence and were implementing the procedures they prescribed.<sup>232</sup>
95. However, although he accepted it was part of his responsibility to do so,<sup>233</sup> Mr. Ironside conceded that, since he'd been in the position of National Manager (i.e., since March 2006) he had not supervised or implemented any audits of any operating procedures or work instructions.<sup>234</sup> He also said that he could not recall his superior, Mr. Liehne, ever asking him whether he had conducted any such audits.<sup>235</sup> The explanation given by Mr. Ironside for not conducting any audits was that resources are limited and only the highest priority items make it into the business plan as something to be done in the upcoming year.<sup>236</sup> According to him: *"Pre-August it was not considered a high priority to audit SOPs and work procedures except for the one*

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<sup>220</sup> T976.16 (Dr. Widders).

<sup>221</sup> T976.29 (Dr. Widders).

<sup>222</sup> WIT.AQIS.012.0002 at [13] (Hankins); WIT.AQIS.007.0003 at [14] (Holloway).

<sup>223</sup> WIT.AQIS.007.0001 at [5] – 0003 at [14], 0004 [24] (Holloway); T2533.45 (Holloway).

<sup>224</sup> T2534.2 (Holloway).

<sup>225</sup> T2531.36, 2546.36 – 2547.3, 2550.30 (Holloway).

<sup>226</sup> T2547.10, 2551.6 – 25 (Holloway).

<sup>227</sup> T2551.25 (Holloway).

<sup>228</sup> T1414.20 – 34, T1416.10 (Christesen).

<sup>229</sup> T1416.47 (Christesen).

<sup>230</sup> T1417.5 (Christesen).

<sup>231</sup> T324.47, 348.42 (Ironside).

<sup>232</sup> T1141.27 – 1142.24 (Dr. Widders).

<sup>233</sup> T254.45, 280.32 – 45, 282.8 (Ironside).

<sup>234</sup> T255.14, 281.1 (Ironside).

<sup>235</sup> T256.8 – 11 (Ironside).

<sup>236</sup> T256.13 – 37 (Ironside).

*that relates to fish*".<sup>237</sup> Of course, as has been noted, the Program's business plan for 2005/6 did envisage an audit of standard work procedures at the quarantine stations being completed by March 2006. Nonetheless, it apparently remained a low priority for Mr. Ironside, even after he became aware, in March 2007, that neither Mr. Hankins nor his staff at ECQS had previously seen the Work Instruction. Mr. Ironside did not thereafter check to see what was being done at ECQS.<sup>238</sup>

96. Dr. Clegg (who had been National Manager of Live Animal Imports before Mr. Ironside's time) similarly conceded that one of the program's activities was to check to see that work instructions were being implemented, but could not recall any such check having occurred in relation to NSW and admitted there was never a "formal audit" of ECQS or SQS in relation to horse procedures.<sup>239</sup> She "didn't see it as a key task" to check to see whether ECQS and SQS were doing what they were supposed to be doing.<sup>240</sup> Other priorities took precedence and the Operations Manual had not been finalised.<sup>241</sup>
97. It should be noted that Dr. Clegg gave evidence that the Work Instruction recorded procedures that were already being followed in the regions.<sup>242</sup> When it was put to her that she was not in a position to know whether the Work Instruction recorded what was actually being done at the airports and quarantine stations prior to its issue, Dr. Clegg initially disagreed and said she had been told that the Work Instruction represented what was happening in Sydney and Melbourne when horses were being cleared and how they were managed on arrival at the quarantine stations.<sup>243</sup> When pressed to say who had told her that, Dr. Clegg referred to conversations with Mr. Hayes and Dr. Widders while she was Manager, but when pressed further, Dr. Clegg admitted that "they didn't tell me that" and that no-one had told her: "No, I have surmised it".<sup>244</sup>
98. Dr. Widders said he was concerned that the fact that supervision of vets and farriers who entered and left ECQS after hours was left to the grooms in an informal way "was a risk that AQIS had no control over".<sup>245</sup> But it did not exercise his mind a lot at the time.<sup>246</sup> He accepted that it should have.<sup>247</sup> Dr. Widders also agreed that he was not in a position to know whether all of the vets and farriers were complying with biosecurity procedures.<sup>248</sup> Nor did he know whether they were signing forms upon entry to ECQS.<sup>249</sup> He spoke of an "expectation" that staff were aware of and

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<sup>237</sup> T256.35 – 37, 279.7 – 11, 293.3 – 10 (Ironside).

<sup>238</sup> T280.4 – 10 (Ironside).

<sup>239</sup> 3350.33 – 3351.28, 3352.20 (Dr. Clegg).

<sup>240</sup> T3352.24 (Dr. Clegg).

<sup>241</sup> T3353.9 – 42, 3369.20 – 34 (Dr. Clegg).

<sup>242</sup> T3359.38, 3360.29 – 37, 3437.17 – 3438.4 (Dr. Clegg).

<sup>243</sup> T3440.19 – 3441.8 (Dr. Clegg).

<sup>244</sup> T3441.38 – 3444.6 (Dr. Clegg).

<sup>245</sup> T981.9 (Dr. Widders).

<sup>246</sup> T981.10 (Dr. Widders).

<sup>247</sup> T982.18 (Dr. Widders).

<sup>248</sup> T983.1 (Dr. Widders).

<sup>249</sup> T983.31 (Dr. Widders).

complying with the Work Instruction, but agreed “*it would have been better to have specifically checked on that*”.<sup>250</sup> He accepted that, in the year prior to the outbreak, there had been no effort on the part of AQIS to audit whether work instructions or procedures were being complied with at ECQS,<sup>251</sup> and that he didn’t know one way or the other whether the Work Instruction was being complied with at ECQS.<sup>252</sup>

Failure to ensure that vets, farriers, grooms or other persons showered, etc.

99. There is no doubt on the evidence that persons were entering and leaving ECQS during August 2007 without changing their clothes, showering and/or disinfecting their equipment. For example:
- 99.1. Mr. Sutherland (groom) and Dr. Edgar (vet) attended on Elusive Quality on 22 August 2007, but did not shower or wash their heads or hair before leaving ECQS.<sup>253</sup>
- 99.2. Mr Hinze (farrier) worked on a number of horses within ECQS on 14 August, but did not change his clothes, disinfect his equipment or shower before leaving.<sup>254</sup>
- 99.3. Dr. Crowley (vet) visited ECQS on 8, 9 and 10 August, but was not observed to change his clothes or shower before leaving on any of those occasions.<sup>255</sup>
- 99.4. Ms Cushing (groom) did not always shower before leaving ECQS, and she observed other grooms leaving at lunchtime without showering or changing.<sup>256</sup>
- 99.5. No less than 4 vets from the Randwick Equine Centre attended upon the horses within ECQS at various times during August 2007, but did not shower out or wash their hair before leaving.<sup>257</sup>
- 99.6. Dr Argyle (vet) attended to numerous horses within ECQS during August 2007, but did not shower before leaving.<sup>258</sup>
- 99.7. Mr. Barlow (farrier) showered, but did not clean or disinfect his tools or apron.<sup>259</sup>
100. It is plain that, as at August 2007, AQIS personnel were not making vets and farriers aware of the PAQ requirements before entering ECQS; nor were they ensuring that vets and farriers showered-out, changed their clothes and disinfecting equipment before leaving. In addition to the evidence as to what actually happened during August 2007 (referred to above):

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<sup>250</sup> T1142.37 – 1143.5 (Widders).

<sup>251</sup> T1143.34 (Dr. Widders).

<sup>252</sup> T1238.23 – 35 (Dr. Widders).

<sup>253</sup> T559.36 – 560.6 (Sutherland).

<sup>254</sup> T863.36, 867.15 – 40, 868.5, 868.29 (Carey); WIT.COOL.007.0004 at [18] (Hinze).

<sup>255</sup> T869.6 – 18 (Carey).

<sup>256</sup> T1500. 16 – 1501.33 (Cushing).

<sup>257</sup> T1506.18 – 27, 1506.45 – 1507.1, 1507.27 (Cushing); WIT.REX.001.0002 at [8] – [10], 0004 at [17], 0009 at [40] (Dr. Nash); T1554.41, 1597.47 – 1598.36 (Dr. Nash); WIT.REX.006.0003 at [12] (Dr. Bruyn); WIT.REX.002.0004 at [14], [19] (Dr. Whitfield); WIT.REX.005.0002 at [8], 0010 at [10] (Dr. Adams).

<sup>258</sup> WIT.WLYE.001.0003 at [10], 0004 at [14], 0005 at [21], [24], [25], 0006 at [29], [32], [33], [37], etc (Dr. Argyle).

<sup>259</sup> T1539.25 – 36 (Cushing); WIT.BAR.001.0003 at [20], 0004 at [30] (Barlow).

- 100.1. Ms Christesen agreed that she wasn't making vets and farriers aware of the PAQ requirements,<sup>260</sup> and that there was no form being completed by any of the vets or farriers.<sup>261</sup> She had also never seen the vets do anything which suggested they were showering.<sup>262</sup>
- 100.2. Mr. Holloway said he "*didn't observe the decontamination procedure*" and that he was not aware whether visitors to ECQS were showering before leaving.<sup>263</sup>
- 100.3. Mr. Hankins did not personally supervise vets and farriers to ensure they wore protective clothing and showered before leaving.<sup>264</sup> Mr. Hankins hadn't checked to see that Ms Christesen was requiring vets and farriers to shower out or whether she was inducting the vets and farriers.<sup>265</sup> Indeed, he was not aware of any direct supervision by AQIS staff of vets attending ECQS prior to the outbreak.<sup>266</sup> Mr. Hankins said that he didn't know what arrangements were in place regarding the induction of farriers and that he was not aware whether vets were being inducted into ECQS.<sup>267</sup> He had not seen the "Authorisation for Vet or Farrier to Enter" form being used and he wasn't aware whether Ms Christesen was using it.<sup>268</sup>
- 100.4. Dr. Widders agreed that there was no AQIS oversight of vets or farriers who attended ECQS after hours, and that he was not in a position to know whether all of the vets and farriers were complying with biosecurity procedures.<sup>269</sup>
101. Nor were AQIS personnel checking that grooms were showering and changing before leaving. Ms Christesen was not sure whether they were or weren't.<sup>270</sup> She never thought it was her responsibility to check.<sup>271</sup> Mr. Hankins conceded there was "*no process that would ensure and directly monitor whether they had showered or hadn't showered*".<sup>272</sup> He understood that was not something that the staff at ECQS were doing or were required to do.<sup>273</sup>
102. It is also plain that, in and prior to August 2007, staff at ECQS were not complying with the Work Instruction or the Operations Manual. Indeed, the reality is that the staff were not even attempting to comply with those documents because (as noted above) they did not know that compliance was necessary. Mr. Hankins conceded that he did not enforce compliance by his staff with the Work Instruction or the Operations Manual.<sup>274</sup> He also conceded it would be wrong to suggest that he was doing his best

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<sup>260</sup> T1418.43 (Christesen).

<sup>261</sup> T1430.26 (Christesen).

<sup>262</sup> T1428.9 – 27 (Christesen).

<sup>263</sup> T2582.19 – 28 (Holloway).

<sup>264</sup> T2224.12 (Hankins).

<sup>265</sup> T1945.7 – 19, 2224.19 – 25 (Hankins).

<sup>266</sup> WIT.AQIS.012.0017 at [82] (Hankins).

<sup>267</sup> T1902.20 – 28, 1903.22 – 1904.36 (Hankins).

<sup>268</sup> T1911.44 – 1912.1, 1612.13 (Hankins).

<sup>269</sup> T983.1, 1169.39 (Dr. Widders).

<sup>270</sup> T1439.14 (Christesen).

<sup>271</sup> T1439.19 (Christesen).

<sup>272</sup> T1957.26, 1957.47 – 1958.5 (Hankins).

<sup>273</sup> T1964.46 – 1965.11 (Hankins).

<sup>274</sup> T2222.13 – 25 (Hankins).

to ensure compliance with the Operations Manual,<sup>275</sup> or that his staff were doing their best to ensure compliance with the Operations Manual at ECQS prior to the outbreak.<sup>276</sup> Mr. Holloway could not have been ensuring compliance with the Work Instruction, since he knew nothing about it. His evidence was that *“we were working with the document that Rhonda had produced and we were assessing that Operations Manual as to our compliance with it and whether it was relevant for Eastern Creek or whether it needed some work”*.<sup>277</sup> It was Ms Christensen’s document (not the Operations Manual or the Work Instruction) that *“was the current way that things were being done”*, and against which staff performance would be assessed.<sup>278</sup>

103. The operations at ECQS were anything but consistent with what is required if horses are being treated as though infected with an exotic agent of concern such as Equine Influenza. As Dr. Nunn said, showering, changing and leaving contaminated equipment behind were *“basic measures for biosecurity”*.<sup>279</sup> Mr. Hankins must share some of the responsibility for that situation. In that regard, Mr. Hankins:
- 103.1. Discovered soon after his arrival in March 2007 that *“the staff were not generally aware of written instructions for various species including horses... [and] did not appear to be familiar with any written work procedures relating to dogs or cats”*.<sup>280</sup>
- 103.2. Conceded he knew that the Operations Manual and Work Instruction were not being complied with at ECQS in numerous respects.<sup>281</sup>
- 103.3. Agreed that it was not a satisfactory position to be managing the quarantine station from March 2007, knowing there were two documents, neither of which contained binding procedures, and neither of which were being complied with.<sup>282</sup>
- 103.4. Said that, although addressing the lack of written instructions was initially a high priority, *“it was re-prioritised later”*, once Mr. Ironside had added it as an action item in the national business plan.<sup>283</sup> For Mr. Hankins, *“it wasn’t something I needed to pursue urgently at that point”*.<sup>284</sup> He also agreed he was responsible for finding out what procedures Ms Christensen had to follow and ensure she followed them, but Mr. Hankins’ explanation was that it simply wasn’t amongst his top priorities to do so.<sup>285</sup>

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<sup>275</sup> T2223.39, 2239.36 – 2240.2 (Hankins).

<sup>276</sup> T2223.45, 2240.4 – 13 (Hankins).

<sup>277</sup> T2559.30 – 33 (Holloway).

<sup>278</sup> T2566.13 – 36 (Holloway).

<sup>279</sup> T3286.41 (Dr. Nunn).

<sup>280</sup> WIT.AQIS.012.0007 at [35] (Hankins); T2211.6 – 22 (Hankins).

<sup>281</sup> T1927.2 – 13, 1944.34 – 1945.5, 1945.37 – 1946.47 (Hankins). See also: WIT.AQIS.012.0008 at [39], 0009 [41] (Hankins).

<sup>282</sup> T1927.22, 2218.34 (Hankins).

<sup>283</sup> T2212.26 – 2213.3 (Hankins).

<sup>284</sup> T2212.47 – 2213.1 (Hankins).

<sup>285</sup> T1945.23 (Hankins).

- 103.5. Was aware, prior to the outbreak, that there was a risk that vets, farriers and grooms would actor as vectors for the dissemination of exotic diseases outside the station.<sup>286</sup>
- 103.6. Conceded that, prior to the outbreak, there was a marked absence of “documented controls” in place at ECQS to minimise the risk posed by persons leaving the station and acting as vectors for disease.<sup>287</sup> When pressed to give examples of controls that were in place but weren’t “documented”, Mr Hankins could only offer the provision of overalls to vets and providing a key to the head groom for the amenities block (the latter being a practice which he personally put a stop to prior to the August 2007 intake).<sup>288</sup> He later added disinfection of transport vehicles,<sup>289</sup> which has little to do with minimising the risk posed by persons leaving the station and acting as vectors.

#### ECQS was under-staffed

104. There were no staff at ECQS dedicated to looking after horses or to supervising the grooms, vets and farriers that attend to them during PAQ.<sup>290</sup> Ms Christesen (who also had responsibilities for dogs and cats) was given some responsibility for horses (including groom inductions and supervising the cleaning of transport vehicles), but had no ongoing functions relating to horses during PAQ and was not asked to monitor compliance with the Work Instruction.<sup>291</sup> While, for a time, Ms Christesen checked to see that temperatures were being placed on doors, she did not actually read or record what the temperatures were.<sup>292</sup> She could not recall whether, before the outbreak, she even knew what represented a high temperature.<sup>293</sup> Moreover, after a few months, Ms Christesen had been specifically directed not to go to the horse enclosure as often.<sup>294</sup> In June 2004, Dr. Hibbert had issued a similar directive, specifically requiring that the staff of ECQS should cease recording the daily horse temperatures taken by grooms, citing “other priorities”.<sup>295</sup> He did so notwithstanding Dr. Widders told him that it was an important task and that he would prefer it if temperatures continued to be recorded.<sup>296</sup>
105. This lack of attention to horses is difficult to understand in light of the relative risk and potential for adverse economic impact that was posed by exotic horse diseases.<sup>297</sup> Mr. Ironside agreed that perhaps greater attention should have been paid, and should be paid in the future, to the biosecurity of horses.<sup>298</sup> Indeed, it is very difficult to

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<sup>286</sup> T2221.25 – 33 (Hankins).

<sup>287</sup> T2224.6 (Hankins).

<sup>288</sup> T2224.21 – 2225.35 (Hankins); WIT.AQIS.012.0011 at [51] (Hankins).

<sup>289</sup> T2240.22 – 29 (Hankins).

<sup>290</sup> T313.27 – 314.35 (Ironside); T395.10 (Sims); T964.36, 990.44, 991.19 (Dr. Widders); T1900.33 – 1902.13, 1948.6 – 19 (Hankins).

<sup>291</sup> See: T1023.3 – 1024.23 (Dr. Widders); T1900.33 – 1901.2 (Hankins).

<sup>292</sup> T1415.30 – 38 (Christesen).

<sup>293</sup> T1415.40 – 1416.5 (Christesen).

<sup>294</sup> T1425.1 – 47, 1426.40 – 1427.6 (Christesen).

<sup>295</sup> T991.23 – 992.39 (Dr. Widders).

<sup>296</sup> T992.8 – 26 (Dr. Widders).

<sup>297</sup> See: T959.35, 970.16 – 971.2 (Dr. Widders).

<sup>298</sup> T315.17 – 23 (Ironside).

fathom how (if they thought about it at all) the senior management of AQIS could have understood that the staff at ECQS were ensuring proper biosecurity procedures were observed in relation to horses (including showering-out by visiting vets, farriers and grooms), if not a single staff member was specifically charged with that responsibility.

106. As it was, to the knowledge of senior management, the staff at ECQS were already overstretched.<sup>299</sup> For some time prior to August 2007, both Dr. Widders and Mr. Hankins were requesting that more full-time Quarantine Officers be employed at ECQS, but those requests were being refused by Mr. Ironside.<sup>300</sup> Mr. Ironside admitted that they had complained that ECQS was inadequately resourced on a number of occasions over probably a year, including by telling him that ECQS was carrying cats and dogs at about 150-160% of capacity.<sup>301</sup>
107. At the regional level, Ms Sims had *“responsibility for ensuring that the staffing for [ECQS] and the resources across the region were available to support the station within its budget”*.<sup>302</sup> She was aware that there had been *“over some years, a wish to have more staff at the station”*, and it was her view *“for some time”* that ECQS was understaffed.<sup>303</sup> In Ms Sims’ view, understaffing had an impact on staff’s capacity to examine animals and give them the attention that would normally be expected.<sup>304</sup> Notwithstanding all that, Ms Sims never put a request for more staff in writing.<sup>305</sup>
108. Part of the problem seems to have been indecision on the part of AQIS/DAFF as to whether the lease for ECQS would be renewed on expiry in 2010. The Business Plan for 2007/8 states quite bluntly: *“The Program is not sufficiently prepared for the termination of leases at quarantine stations”*.<sup>306</sup> Ms Gordon admitted that AQIS had now left it so late that the Commonwealth had no option but to renew the lease.<sup>307</sup> No satisfactory explanation was given for the fact that the Commonwealth had been put in such a disadvantageous position. In the meantime, the uncertainty over the future of ECQS has impacted on decisions about capital expenditure and also about whether to engage staff as contractors doing more basic work or as full-time permanent employees.<sup>308</sup> Ms Gordon accepted that uncertainty was not a valid basis for not employing an appropriate number of staff to do the work.<sup>309</sup>
109. Another problem was that *“there were insufficient funds in the budget to be able to afford additional staff”*,<sup>310</sup> and the budget was not going to be increased until a fee

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<sup>299</sup> T1947.25 – 37 (Hankins).

<sup>300</sup> T310.30 (Ironside); T961.38 – 962.12, 962.41 – 963.6 (Dr. Widders).

<sup>301</sup> T312.42 – 313.19 (Ironside).

<sup>302</sup> T376.40 – 43 (Sims).

<sup>303</sup> T388.15, 393.46 (Sims).

<sup>304</sup> T394.42, 395.16 (Sims).

<sup>305</sup> T387.47 – 388.20 (Sims).

<sup>306</sup> AQIS.2002.017.0036.

<sup>307</sup> T3544.15 (Gordon).

<sup>308</sup> T307.15 – 42, 310.21 (Ironside); T394.1 – 17 (Sims); T969.7 – 19 (Dr. Widders).

<sup>309</sup> T3546.46 (Gordon).

<sup>310</sup> T394.25 (Sims).

review was undertaken by the National Program.<sup>311</sup> For some 18 months, Mr. Ironside was telling Dr. Widders that a fee review “*was imminent*”.<sup>312</sup> That fee review never occurred.<sup>313</sup> According to Dr. Clegg, the problem was that there weren’t any staff available to do it.<sup>314</sup> The situation was nothing short of absurd. Additional staff could not be recruited because there were no staff to prepare the report which would prove that more staff were required.

110. In the meantime, the entire budgeting process for ECQS was back-to-front. Dr. Widders agreed with the self-evident proposition that, if you were setting a budget for a quarantine station, it would be sensible to assess whether or not current staff numbers are adequate to enable compliance with existing work instructions.<sup>315</sup> However, that was not done. As Dr. Widders accepted, the budgeting process started with an assumption that existing staff levels were adequate, and additional staff were only made available if there was an identifiable increase in workload for the coming year.<sup>316</sup> That assumption (Dr. Widders agreed) was flawed “*in that it doesn’t deliver us the resources I believe we need to undertake the job*”.<sup>317</sup>
111. There was, however, a more fundamental impediment to adequately staffing ECQS; namely, that decisions as to staff numbers and staff allocation were taken by persons within DAFF/AQIS who had no clue what was required to be done at ECQS on a daily basis, and without any particular regard for the actual purpose of the quarantine station, that is, preventing the introduction of diseases of quarantine concern.
112. That problem is best exemplified by Ms Sims. Despite her responsibility for staffing at ECQS, Ms Sims had no knowledge of the content of the Work Instruction.<sup>318</sup> She did not know, before August 2007, that there was any requirement to inform visitors to the station of quarantine procedures.<sup>319</sup> She was therefore in no position to make sensible judgments about how many or which staff were actually required at ECQS, nor as to what its budget should be, in order to properly carry out the function of preventing the introduction of diseases of quarantine concern.<sup>320</sup> Curiously, Ms Sims did not even think it would be helpful if she knew what the staff had to do on a daily basis.<sup>321</sup> Her inability to recognise how critical it was from a biosecurity perspective that those who worked at the quarantine station were properly trained and understood what procedures they were required to follow was unreal.<sup>322</sup>

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<sup>311</sup> T962.39, 969.7 – 28 (Dr. Widders).

<sup>312</sup> T969.24 (Dr. Widders).

<sup>313</sup> T969.28 (Dr. Widders).

<sup>314</sup> T3392.30 – 47 (Dr. Clegg).

<sup>315</sup> T1166.43 – 1167.1 (Dr. Widders).

<sup>316</sup> T1167.45 (Dr. Widders). See also: T957.38 – 958.3, 1166.32 (Dr. Widders).

<sup>317</sup> T1168.8 (Dr. Widders).

<sup>318</sup> T449.13 (Sims).

<sup>319</sup> T451.13 (Sims).

<sup>320</sup> A proposition Ms Sims denied: T449.19 (Sims).

<sup>321</sup> T450.14 – 25 (Sims).

<sup>322</sup> T450.24, 453.1 – 20 (Sims).

113. The same problem can be discerned in the way that, despite all the talk of insufficient resources, management staff within the Live Animal Imports Program spent weeks each year preparing business plans, which were then reviewed and re-reviewed by numerous people, and (on the evidence) were not necessarily adhered to in any event.<sup>323</sup> Priority was given to the preparation of business plans and other such documents (which are at best optional extras in a quarantine service) in preference to finalising the Operations Manual and checking that staff within ECQS were ensuring compliance with biosecurity procedures essential to prevent the spread of disease.<sup>324</sup>
114. It is to be borne in mind that, after the outbreak, money for additional staff and a security guard was found.<sup>325</sup> AQIS was not some small business operator struggling to make ends meet. The resourcing and understaffing problems at ECQS were entirely the product of AQIS's own bizarre and Byzantine approach to making executive decisions. It seems just about everyone knew that more staff were required, but no-one in authority was able to make a decision which would cause more staff to be made available. Why, for example, could fees not be increased (even on an interim basis) by simply writing a letter to users of the quarantine station? Why was it necessary to engage in a lengthy costs review process before taking such a simple step?

Failure to reconsider or adjust the procedures or operations in light of overseas experience

115. In December 2003, there was an outbreak of Equine Influenza in the general horse population of the Republic of South Africa. A report into that outbreak found that the virus was *"most probably transmitted from the imported horses to South African horses by indirect means (on persons, vehicles or equipment)"*.<sup>326</sup> Amongst other things, the report found that:
- 115.1. The vaccination status of the imported horses was sub-optimal, with low Equine Influenza antibody titre levels observed;<sup>327</sup>
- 115.2. The number of people that come into contact with imported horses must be limited;<sup>328</sup>
- 115.3. Basic to this concept are impenetrable premises with the sole entrance manned at all times that the premises are open, with entry by authorised persons only, and compliance by all concerned with the measures aimed at ensuring that hygiene is universally maintained and observed;<sup>329</sup>
- 115.4. The security and access control at the quarantine facilities was totally inadequate;<sup>330</sup>
- 115.5. It was not clear what standard operating procedures were in place to reduce the risks of persons spreading infection out of the quarantine facility;<sup>331</sup>

<sup>323</sup> T3435.10 – 3437.8 (Dr. Clegg).

<sup>324</sup> T3435.9 – 3437.8 (Dr. Clegg). See: T453.1 – 36 (Sims).

<sup>325</sup> T965.18 – 966.1 (Dr. Widders).

<sup>326</sup> EII.0001.001.0212 (King Report).

<sup>327</sup> EII.0001.001.0212.

<sup>328</sup> EII.0001.001.0214.

<sup>329</sup> EII.0001.001.0214.

<sup>330</sup> EII.0001.001.0214.

- 115.6. Private veterinarians appeared to have almost unlimited access to the horses in quarantine and were allowed into the quarantine station to perform non-essential procedures,<sup>332</sup>
- 115.7. Veterinarians attending to horses in quarantine were not adequately briefed on sanitary measures that had to be followed (eg, the proper use of protective clothing and showering prior to leaving),<sup>333</sup>
- 115.8. There were numerous shortcomings and inadequacies in security, manpower, training and procedures that collectively contributed to the failure of the quarantine system to contain Equine Influenza.<sup>334</sup>
116. Having heard the evidence before this Commission, reading the report into the 2003 South African outbreak is, to borrow a phrase, *déjà vu* all over again. Both outbreaks were the result of indirect transmission of the virus from imported horses to the general horse population, and many of the same shortcomings and inadequacies contributed to both events. Indeed, what happened in South Africa in 2003 should have alerted AQIS to the real risk that the very things which occurred in August 2007 might well occur; and afforded AQIS with an invaluable opportunity to learn from another country's mistakes, review their own methods, and thereby avert the outbreak.
117. Yet AQIS could not have been less interested in what had occurred in South Africa. AQIS's disinclination to learn from the South African experience, or to gain knowledge that might be useful in improving Australia's quarantine measures is astonishing:
- 117.1. Ms Gordon (who was National Manager of Animal programs at the time of the 2003 South African outbreak) said she had no knowledge of the South African outbreak until after 17 August 2007.<sup>335</sup> She was not aware of any consideration by AQIS of whether its procedures ought to be modified in light of what had happened in South Africa.<sup>336</sup> Ms Gordon also said she was not aware, in 2003 or 2004, that the importation of horses from the EU, the USA and certain parts of Asia had caused an outbreak of Equine Influenza in another part of the world.<sup>337</sup> This means that she was also ignorant of at least the 1986 outbreak in South Africa,<sup>338</sup> and the 1992 outbreak in Hong Kong.<sup>339</sup>
- 117.2. Dr. Widders knew of the South African outbreak, but was not aware of any review or audit by AQIS of its own procedures or their implementation in order to ensure that what happened in South Africa did not happen in Australia.<sup>340</sup>
- 117.3. Dr. Brown was not aware of the 2003 outbreak in South Africa until 2 or 3 years ago, when she "*found out incidentally*".<sup>341</sup> She had never read the

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<sup>331</sup> EII.0001.001.0214.

<sup>332</sup> EII.0001.001.0214.

<sup>333</sup> EII.0001.001.0214.

<sup>334</sup> EII.0001.001.0215.

<sup>335</sup> T223.23 – 41 (Gordon).

<sup>336</sup> T223.7 (Gordon).

<sup>337</sup> T229.7 – 15 (Gordon).

<sup>338</sup> WIT.INQ.001.0027 at [25] (Dr. Gilkerson);

<sup>339</sup> EII.0006.003.0207 – 0208 (Dr. Ellis' Report).

<sup>340</sup> T1168.27 – 35 (Dr. Widders).

report into that outbreak.<sup>342</sup> Nor could she recall any steps by AQIS to audit its own procedures in light of what had occurred in South Africa.<sup>343</sup> When asked whether the outbreak in South Africa was effectively ignored by AQIS, Dr. Brown's response was essentially in the affirmative, although expressed as an excuse: "*We received no advice from Biosecurity that they considered that aspects of that pertained to the Australian import conditions*".<sup>344</sup> That excuse cannot explain Dr. Brown's failure to consider the South African outbreak and the report relating to it when she was drafting correspondence for the Minister in response to concerns expressed by the Chairman of ARB. That subject is dealt with separately below.

117.4. Dr. Clegg became aware of the 2003 outbreak in South Africa by means of an email from Dr. Ellis received in December of that year.<sup>345</sup> However, she never read the report into that outbreak, and only read Dr. Ellis' summary.<sup>346</sup>

### **Circumstances contributing to the outbreak – AQIS generally**

118. As defined in s.4 of the *Quarantine Act* 1908 (Cth), the word "*quarantine*" is a verb. It connotes action or "*measures*", such as "*examination, exclusion, detention, observation, segregation... seizure and destruction*" of animals, plants, goods or other things.<sup>347</sup>

119. AQIS, on the other hand, has been shown by the evidence before the Commission to be a sedentary and reactive organisation, which very much left quarantine up to others, be they overseas authorities or junior employees whose functions were considered too lowly to warrant real consideration by those in authority.

120. Further, AQIS operated on the assumption that measures critical to Australia's biosecurity were being followed overseas and in Australia, but did not consider it worthwhile to check whether that assumption was correct. When questions were raised about the efficacy of Australia's quarantine procedures, AQIS denied there was any issue – again, without bothering to check. A case in point is the correspondence that passed between ARB and the Minister from late 2004 to mid 2005:

120.1. In September 2004, the then Chairman of ARB (Mr. Ramsden) wrote to the then Minister and objected to what he understood to be an AQIS initiative to shift PAQ duties from AQIS Veterinary Officers to private veterinarians.<sup>348</sup> It will be recalled that, a few months earlier, the Live Animal Imports Review had been distributed. One of its recommendations was that AQIS Veterinarians should no longer conduct an examination of or take blood samples from

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<sup>341</sup> T2766.12 – 23 (Dr. Brown).

<sup>342</sup> T2765.32 – 38 (Dr. Brown).

<sup>343</sup> T2765.41 – 2766.4 (Dr. Brown).

<sup>344</sup> T2766.8 (Dr. Brown).

<sup>345</sup> T3447.41 – 3448.6 (Dr. Clegg).

<sup>346</sup> T3458.6 – 33 (Dr. Clegg).

<sup>347</sup> Act, s.4.

<sup>348</sup> AQIS.2002.022.0024 – 0025.

horses on arrival in PAQ, and that private veterinarians should undertake those tasks.<sup>349</sup>

- 120.2. In his letter, Mr. Ramsden expressly referred to the 2003 and the 1986 outbreaks of Equine Influenza in South Africa and the role of private veterinarians in the quarantine breakdowns which had occurred.<sup>350</sup> He said “*proposed devolution of the PAQ responsibilities from AQIS veterinary officers to the private veterinarians potentially compromises rather than strengthens national biosecurity measures to prevent the entry of significant horse industry diseases*”.<sup>351</sup> Having regard to the evidence before this Commission as to the repeated failures of private veterinarians to change their clothes and shower before leaving ECQS, and AQIS’s failures to ensure that did not occur, Mr. Ramsden’s concerns about increasing the involvement of private veterinarians in PAQ were more than justified. They were prescient.
- 120.3. The Minister responded in January 2005.<sup>352</sup> He assured Mr. Ramsden that the management of horses in quarantine would remain under the “*direct control*” of an AQIS Veterinary Officer, and that there were “*no plans to replace AQIS veterinary officers with private veterinarians*”. That statement was misleading in light of the recommendation made in the Live Animal Import Review and the absence of “*direct control*” revealed by the evidence. The Minister went on to say that AQIS Veterinary Officers “*oversee*” the taking of blood samples at the commencement of PAQ, and that grooms provide temperature information “*daily to AQIS*”. Those statements were incorrect. At ECQS, grooms were not providing temperature records to AQIS daily and Dr. Hibbert had specifically directed that ECQS staff should cease recording temperatures daily. Further, Dr. Brown (who had “*some input into the drafting*” of the Minister’s letter)<sup>353</sup> agreed that the recommendation that blood sampling be done by private veterinarians had been implemented at SQS.<sup>354</sup> She tried to say that “*oversee*” does not mean being present when the blood sample is taken,<sup>355</sup> but the ordinary meaning of the word is: “*1. to direct (work or workers); supervise; manage; 2. to see or observe without being seen; 3. to survey; watch; 4. to look over; inspect*”.<sup>356</sup>
- 120.4. Dr. Clegg said she “*signed off*” the Minister’s response of January 2005,<sup>357</sup> but did not make any inquiries of persons at the quarantine stations before doing so.<sup>358</sup>
- 120.5. Mr. Ramsden wrote another letter to the Minister in May 2005.<sup>359</sup> He referred to the fact that AQIS Veterinary Officers were no longer clearing live horses at

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<sup>349</sup> DAFF.0001.069.2323 – 2324.

<sup>350</sup> AQIS.2002.022.0024.

<sup>351</sup> AQIS.2002.022.0025.

<sup>352</sup> AQIS.2002.022.0026.

<sup>353</sup> T2776.29 (Dr. Brown).

<sup>354</sup> T2762.22, 2777.36 – 44 (Dr. Brown).

<sup>355</sup> T2777.40 – 2778.7 (Dr. Brown).

<sup>356</sup> Macquarie Dictionary, 2<sup>nd</sup> Edition, 1991.

<sup>357</sup> T3453.18 (Dr. Clegg).

<sup>358</sup> T3453.25 (Dr. Clegg).

<sup>359</sup> AQIS.2002.022.0027 – 0029.

Tullamarine Airport.<sup>360</sup> That was indeed the position and had been one of the recommendations of the Live Animal Imports Review.<sup>361</sup> Mr. Ramsden also referred to the fact that, in Victoria, the initial examination and blood sampling in PAQ was now being conducted by a private veterinarian and an AQIS Veterinary Officer is usually not present.<sup>362</sup> He then said:<sup>363</sup>

*“Equine influenza is the exotic disease that the Australian horse industry most fears. If equine influenza gained entry to Australia, it would close down racing and other horse events for several months with catastrophic economic consequences. A quarantine breakdown is the only way Australia will be exposed to this exotic disease. As recently as November 2003, private veterinarians attending recently imported horses played a prominent role in a quarantine breakdown which led to a closedown of racing in the Republic of South Africa until mid February 2004.*

*The Australian Racing Board considers that the recent changes implemented by AQIS compromise national biosecurity to prevent the entry of exotic disease.”*

It is difficult to imagine a more pertinent warning.

120.6. Yet the Minister’s reply of 31 May 2005 politely dismissed Mr. Ramsden’s concerns.<sup>364</sup> Amongst other things, the Minister’s reply asserted that:<sup>365</sup>

*“Horses are under AQIS control at all time during quarantine... access is restricted and there are decontamination procedures in place for all those having direct contact. ...inspection and temperature data is provided to AQIS veterinarians who monitor the health of the horses and decide what actions need to be taken if a horse shows signs of illness whilst in quarantine.”*

Unless things at ECQS were markedly different in May 2005 to what has been revealed in evidence before this Commission, those assertions were misleading. Nothing worthy of the name “*decontamination procedure*” was “*in place*” at ECQS by late 2006 or in 2007, and AQIS Veterinarians were not aware what treatments private vets were prescribing during August 2007 until after the event. Dr. Brown (who did a draft of the Minister’s reply)<sup>366</sup> did not check, before the letter was written, whether there were decontamination procedures in place at ECQS or whether AQIS vets were monitoring the health of horses and making decisions about what actions need to be taken.<sup>367</sup> Nor was she aware of anyone else within having AQIS checking the accuracy of those assertions.<sup>368</sup>

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<sup>360</sup> AQIS.2002.022.0027.

<sup>361</sup> DAFF.0001.069.2323 – 2324; T2767.11 (Dr. Brown); T3454.44 (Dr. Clegg).

<sup>362</sup> AQIS.2002.022.0028.

<sup>363</sup> AQIS.2002.022.0029.

<sup>364</sup> AQIS.2002.022.0030 – 0031.

<sup>365</sup> AQIS.2002.022.0030 – 0031 (emphasis added).

<sup>366</sup> T2769.26 (Dr. Brown).

<sup>367</sup> T2775.24 – 40 (Dr. Brown).

<sup>368</sup> T2775.21, 2775.45 (Dr. Brown).

- 120.7. Dr. Clegg approved a Minute for the Minister recommending that he sign the 31 May 2005 reply.<sup>369</sup> She had also reviewed and possibly drafted parts of the letter.<sup>370</sup> The Minute that Dr. Clegg approved advised the Minister that the use of private vets “has no impact on the risk of introduction of equine influenza”.<sup>371</sup> Dr. Clegg agreed that was only true if there were thorough decontamination procedures in place which are in fact being implemented at the quarantine station.<sup>372</sup> But Dr. Clegg did not take steps to determine whether such decontamination procedures were being followed.<sup>373</sup>
- 120.8. The Minister’s letter of 31 May 2005 asserted that:<sup>374</sup>

*“The circumstances that led to the outbreak of equine influenza in the Republic of South Africa could not occur under the current AQIS post-arrival protocol. ...Indeed, the recommendations of the report of the investigation into the outbreak (the King Report) are all standard procedures in Australia’s post-arrival protocol.”*

Yet, neither Dr. Brown nor Dr. Clegg (both of whom had a hand in drafting the letter) had read the King Report.<sup>375</sup> More fundamentally, neither of them had made any inquiries to ascertain whether the numerous shortcomings and inadequacies in security, manpower, training and procedures that collectively contributed to the failure of the quarantine system in South Africa might be present in Australia.

121. Despite their content, Mr. Ramsden’s letters did not trigger any examination by AQIS of the adequacy of biosecurity measures pertaining to horses that were being followed at the quarantine stations.<sup>376</sup> It seems only an actual outbreak of Equine Influenza could do that.

### **Exposure Recommendations**

122. The Exposure Recommendations published by the Commission are, with only two exceptions, supported by ARB, TBA, Aushorse and HRA. It is proposed to deal with the exceptions first, before making certain comments about the remaining recommendations.
123. The first exception is Exposure Recommendation 21, which would ban importations of live horses to Tullamarine Airport unless and until a new facility were constructed. In that regard:
- 123.1. Such a ban would have a significant adverse impact on an industry that has already suffered much due to the outbreak. This is because it would almost certainly prevent international racehorses from attending the 2008 Melbourne Spring Carnival. About 10 to 20 international racehorses usually attend that

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<sup>369</sup> AQIS.2002.022.0021 – 0023.

<sup>370</sup> T3448.30 (Dr. Brown).

<sup>371</sup> AQIS.2002.022.0021.

<sup>372</sup> T3449.2 (Dr. Brown).

<sup>373</sup> T3349.10 – 17 (Dr. Brown).

<sup>374</sup> AQIS.2002.022.0031 (emphasis added).

<sup>375</sup> T2765.32 – 38 (Dr. Brown); T3457.41 – 3458.33 (Dr. Clegg).

<sup>376</sup> T3455.42 (Dr. Brown).

- event. They would be expected to arrive at Tullamarine Airport in September or October 2008, and spend PAQ at Sandown, which was specially designed and constructed to enable racehorses to continue training and preparing for race meetings (in particular, the Spring Carnival) whilst in quarantine.<sup>377</sup>
- 123.2. There is no equivalent facility in Sydney. ECQS is obviously unsuitable. The Canterbury facility is not presently operating and has never been used for quarantine purposes. There is no prospect of racehorses running in the Melbourne Spring Carnival if they have been unable to train during PAQ.
- 123.3. It is presumed that horses which have not completed PAQ will not be permitted to travel to Melbourne by road. Such a journey is undesirable from a quarantine perspective. It is also a very lengthy journey, and it is not clear that the owners or trainers of international racehorses would be prepared to let the horses undertake such a journey before a significant race, even if it were permitted.
- 123.4. Dr. O'Callaghan's evidence was that the Melbourne Spring Carnival has an economic impact of \$550 million per year on the Victorian economy.<sup>378</sup> Much of the publicity and cachet associated with that event derives from the presence of a number of the world's best racehorses. Their absence would inevitably reduce the overall level of interest, prestige and revenue.
- 123.5. Another consequence of this recommendation will be that horses will not be able to undergo PAQ at Sandown, which is, after all, a far superior alternative to ECQS, and instead, more horses will be sent to ECQS.
- 123.6. It should also be noted that a large proportion of Standardbreds imported to Australia by air presently enter via Melbourne to go to studs in Victoria and Southern NSW.
- 123.7. Therefore, although Exposure Recommendation 21 is supported insofar as it requires the construction of a facility for the transfer of horses at Tullamarine Airport, it is respectfully submitted that the import of live horses via Tullamarine Airport should not be banned in the meantime. Dr. Gilkerson's evidence was that the risk of failure of containment at the airport was "slight".<sup>379</sup> The main risk is of transfer of the virus via contaminated persons, equipment or transport.<sup>380</sup> Therefore, if the other Exposure Recommendations are implemented, then the quarantine risks posed by receiving horses at Tullamarine Airport will already have been considerably reduced, such that continuing to receive horses during construction of the new facility will not, on balance, pose a substantial or unacceptable risk.
124. The second exception is Exposure Recommendation 24, which would require every quarantine station to contain 2 or 3 separate horse compounds and to undertake "a continental separation of horses... so that horses from America, Europe and Asia are quarantined in a separate compound from each other [eg, if only two compounds are

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<sup>377</sup> WIT.SAND.001.0001 at [4]; SAND.0001.001.0014.

<sup>378</sup> T2866.24 – 32 (Dr. O'Callaghan).

<sup>379</sup> WIT.INQ.003.0015 (Dr. Gilkerson – Supplementary Report).

<sup>380</sup> WIT.INQ.003.0016 (Dr. Gilkerson – Supplementary Report).

*available in a quarantine station then horses from no more than two continental areas may be permitted in a single intake].”* In that regard:

- 124.1. The italicised portion of this recommendation would limit international participation in Australian racing. As Dr. O’Callaghan explained, owing to the all-in, all-out principle, until the construction of a second compound at Sandown, some racehorses were required to be in quarantine for up to 40 days and that length of time was “*counter to the maintenance of good racing form*”.<sup>381</sup> It was precisely to avoid this problem, and to enable international horses to race in different events over a more extended period, that expenditure was incurred to create a second compound at Sandown.<sup>382</sup>
- 124.2. If Exposure Recommendation 24 were implemented insofar as it requires horses from different continents to be quarantined in separate compounds, the number and variety of international racehorses would be severely limited. For example, if one horse from Asia was running, no horses from Europe or America would be able to utilise the same compound. Moreover, the horses in the remaining compound be restricted to horses from Europe or America (not both) and all would have to leave quarantine at the same time, so that some of them would inevitably spend too long in quarantine and lose form.
- 124.3. At Sandown presently, horses from different geographical areas are separated from one another to a degree, in that, although they can be in the same compound, they are stabled in separate buildings 25 metres apart.<sup>383</sup> The two compounds are 300 metres apart.<sup>384</sup> Both compounds operate independently of one another, in the sense that all contact, both direct and indirect, between the horses held at the two facilities is avoided.<sup>385</sup>
- 124.4. Therefore, although the Exposure Recommendation 24 is supported insofar as it requires the introduction of two or three separate compounds, it is respectfully submitted that it should remain permissible to stable horses from different continents within the same compound.
- 124.5. It is respectfully submitted that it is unnecessary to require that horses from different continents undergo PAQ in separate compounds, particularly given Exposure Recommendations 19(b), 19(c), 19(e), 19(g), 20 and 26(c) to 26(j), which will substantially reduce the risk of infected horses arriving in Australia or (in the event they do) of going undetected within the quarantine station.
- 124.6. It is also to be borne in mind that the August 2007 outbreak was itself detected whilst the imported horses were still in PAQ, and the disease escaped from quarantine because of inadequate decontamination procedures and practices at ECQS. In a properly run facility such as Sandown, where adequate biosecurity procedures have been formulated and are enforced, there is no need for such a change.

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<sup>381</sup> WIT.SAND.001.0001 at [6] (Dr. O’Callaghan).

<sup>382</sup> WIT.SAND.001.0001 at [6] (Dr. O’Callaghan); SAND.0001.001.0014.

<sup>383</sup> WIT.SAND.001.0006 at [33] (Dr. O’Callaghan).

<sup>384</sup> SAND.0001.001.0009.

<sup>385</sup> SAND.0001.001.0014.

- 124.7. As an alternative, it should be recommended that the GVH examine the feasibility and necessity for physical separation on a station-by-station basis.
125. As for the remaining Exposure Recommendations, they are all supported by ARB, TBA, Aushorse and HRA. The following additional comments and suggestions are made:
- 125.1. As regards Exposure Recommendation 5, the Minister should consult with at least ARB and HRA.
- 125.2. As regards Exposure Recommendation 6, the IG should be required to meet at least annually with ARB and HRA to discuss matters relating to the importation and quarantine of horses.
- 125.3. As regards Exposure Recommendation 18, the GVH should be required to publish an annual report of its activities.
- 125.4. As regards Exposure Recommendation 19:
- (a) It should be specifically recommended that the biosecurity procedures in PEQ must include showering-in, changing clothes upon entry and not bringing equipment from outside the facility; and
  - (b) The GVH should be required to publish a guide for importers and exporters of live horses, setting out in plain language the minimum PEQ requirements that apply to the importation of horses to Australia, as well as forms to be completed during PEQ such as an entry/exit log, daily health record sheets and truck-disinfection record. Those forms should be completed during PEQ and accompany the horse to Australia.
- 125.5. As regards Exposure Recommendation 22, it should be clarified that it is not intended that existing private facilities, such as Sandown, should be closed.
126. Having regard to the evidence which emerged as to the inaccurate advice that the Minister received from-time-to-time, it is submitted that a further recommendation should be made to the effect that no advice is to be given to the Minister in relation to quarantine unless the Departmental Officer responsible for that advice certifies that he or she is satisfied, after reasonable enquiry, that the material facts contained in that advice are true.

### **Shuttle stallions & Artificial insemination**

127. On the evidence, the most likely scenario is that the August 2007 outbreak of Equine Influenza originated from the 5 mares which undertook PEQ at Northern Farm, which then infected other horses carried on Flight CX23 from Chitose Airport. The fact that the other horses on that flight included "shuttle stallions" is happenstance; it is not due to some fault on the part of the stallions or their owners. Moreover, that one or more shuttle stallions became infected with the virus was not due to some characteristic peculiar to shuttle stallions. As Dr. Newton said, it is "*hard to conceive*" there would

not be “*widespread contamination*” if the virus was being shed into a shared airspace in the hold of a cargo plane.<sup>386</sup>

128. The number of stallions who “shuttle” between Australia and the Northern Hemisphere each year is relatively small. Since 1997, the number of such “shuttle stallions” has ranged between 52 and 66 per year.<sup>387</sup> That is only 2-3% of thoroughbred imports or (if imports from New Zealand are excluded) only about 11.8%.<sup>388</sup> If non-thoroughbreds are taken into account, then shuttle stallions comprise an even smaller proportion of live horse imports.
129. It would be wrong, therefore, to conclude that shuttle stallions represent an unmanageable burden for the quarantine system of this country. The stallions themselves do not require any more attention from AQIS personnel than is required by any other horse,<sup>389</sup> and at other times of the year there can be more horses at ECQS than are present during the shuttle stallion intakes.<sup>390</sup> The principal difference is that shuttle stallions tend to arrive with grooms, vets and farriers who need to be monitored. Yet, the same can be said of racehorses, and there is no evidence that a properly run quarantine facility (such as Sandown) cannot deal with such persons in a manner consistent with good biosecurity. Further, although the presence of grooms and vets creates a need for vigilance in the area of decontamination, it also has potential benefits, in that the health of shuttle stallions will be more closely monitored than that of other horses during PAQ, such that infections are more likely to be noticed, as they were in August 2007.
130. It would also be wrong to conclude that prohibiting or restricting the import of shuttle stallions would markedly reduce the risks associated with the importation of live horses. The perception that a shuttle stallion poses a greater risk of introducing Equine Influenza because it has been in the vicinity of many mares which live in areas where the virus is endemic is a product of ignorance regarding the incubation and excretion of the virus. It is not possible for a stallion infected with the virus before PEQ to remain infectious after 21 days of PEQ. Dr. Gilkerson said that infected animals are rarely infectious for more than 7 days.<sup>391</sup> Dr. Nunn’s evidence was that the latent period for the virus is between 1 and 3 days, and the infectious period lasts for 10 to 14 days.<sup>392</sup> That means that, in order to be infectious upon arrival or during transport to Australia, a shuttle stallion would have to be infected less than 17 days beforehand; that is, more than 4 days after arrival into PEQ.
131. This is not to deny that there are risks involved. But there are risks involved in any horse importation. The point is that those risks are not markedly higher in the case of

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<sup>386</sup> T4192.4 – 9 (Dr. Newton).

<sup>387</sup> WIT.ARB.002.0006 at [29] (Ford); WIT.ARB.002.0215; T1166.17 (Dr. Widders); T3056.17 – 24 (Digby); T1369.5 (Wallace).

<sup>388</sup> WIT.ARB.002.0006 at [29] (Ford); WIT.ARB.002.0215; T2595.36 – 45 (Dr. Brown).

<sup>389</sup> T1474.12 – 32 (Christesen); T1516.38 – 1517.32 (Cushing); T1356.9 – 25 (Bennett).

<sup>390</sup> T1949.24 (Hankins); T1474.41 (Christesen).

<sup>391</sup> WIT.INQ.001.0032 (Dr. Gilkerson).

<sup>392</sup> T3338.13 – 40 (Dr. Nunn).

shuttle stallions than they are in the case of any other horse;<sup>393</sup> particularly when regard is had to the fact that the health and movements of other horses of much lesser value and pedigree are not nearly so closely monitored as those of the shuttle stallions. Leaving aside imports from New Zealand, most horses imported to Australia come from areas where Equine Influenza is endemic.<sup>394</sup>

132. As to the use of Artificial Insemination (**AI**) as an alternative to shuttle stallions:
- 132.1. The matters outlined above demonstrate that AI will not make a material difference to the level of quarantine risk posed by the importation of horses.
- 132.2. Article 12 of the International Agreement on Racing and Wagering (**International Agreement**) prohibits a horse that is the product of AI from being entered in an approved Thoroughbred Stud Book, and such a horse is not a Thoroughbred as defined in the International Agreement.<sup>395</sup> That prohibition is picked-up by the Australian Stud Book Rules and the Australian Rules of Racing.<sup>396</sup>
- 132.3. Unless and until the International Agreement is altered, horses produced in Australia by means of AI and their progeny:<sup>397</sup>
- (a) Would not be regarded as Thoroughbreds in other parts of the world;
  - (b) Would not be able to compete internationally in an official race organised by a Thoroughbred Authority; and
  - (c) Would be useless for Thoroughbred breeding internationally.
- 132.4. Further, there is a risk that, were the Australian Stud Book to permit horses produced in Australia by means of AI and their progeny to be entered in the Stud Book, the Australian Stud Book would cease to be an approved Stud Book for the purposes of the International Agreement, which would:<sup>398</sup>
- (a) Reduce the value of all Thoroughbreds in Australia; and
  - (b) Substantially reduce the number and value of exports of Thoroughbreds from Australia.
- 132.5. Whatever view is taken of the continuation of the prohibition embodied in Article 12, it is a prohibition that applies internationally, and which Australia cannot alter on its own. There is no prospect of it being altered any time soon.<sup>399</sup> Mr. Digby spoke of the possibility of Australia leading a charge to overturn the international position.<sup>400</sup> But he himself said: *“Every time you tried to talk about AI”* at the international level *“you were told you couldn’t*

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<sup>393</sup> That was Dr. Widders’ view: T1225.15, 1226.12 (Dr. Widders). Although Mr. Digby held a contrary view, he was not especially aware of PEQ and PAQ arrangements, or of the material characteristics of the virus, and he accepted that reasonable minds could differ: T3060.31 – 34, 3061.14 – 42, 3062.11 – 3066.28 (Digby).

<sup>394</sup> WIT.ARB.002.0215; T3058.24 – 3060.14 (Digby).

<sup>395</sup> WIT.ARB.002.0002 at [8] – 0003 at [14] (Ford); T3070.1 – 20 (Digby).

<sup>396</sup> WIT.ARB.002.0003 at [15] – 0005 at [26] (Ford).

<sup>397</sup> WIT.ARB.002.0005 – 0006 at [27] (Ford); T3070.22 – 3071.3, 3072.45 – 3073.26 (Digby); T3773.12 (Ford).

<sup>398</sup> WIT.ARB.002.0008 at [36] – 0009 [40] (Ford); T3073.45 – 3074.3 (Digby). Cf. T3121.1 (Digby).

Note the effect this would have on businesses such as IRT’s: 1394.44 – 1395.16, 1396.39 – 1397.15 (Wallace).

<sup>399</sup> WIT.ARB.002.0006 at [28] (Ford); T3076.44 – 3077.1 (Digby); T3772.14 – 44 (Ford).

<sup>400</sup> T3075.35 – 3076.10, 3121.1 – 18 (Digby).

*discuss it*".<sup>401</sup> He agreed that, although he had tried hard to have the issue discussed, the international body would not have a bar of it.<sup>402</sup> In the end, he said "*the only way*" the international body would remove its ban "*is with a legal challenge*".<sup>403</sup> Mr. Ford summarised the position as follows:<sup>404</sup>

*"...we need the Northern Hemisphere horses more than they need us down here...*

*Northern Hemisphere countries, particularly the large ones like Ireland, England and the United States, are fairly self-sufficient in their racing and almost insular. ...Mr. Digby... was my boss for quite a number of years, and he is probably the most forceful man I've ever dealt with, the hardest person I have ever worked with... However, he tried from 1996 to 2002 to get change at an international level and was unable to do so despite every method he could use to bring it, including logical argument to downright throwing his books on the table."*

Mr. Digby agreed that, whilst AI is banned at an international level, Australia has no option but to follow that ban.<sup>405</sup>

132.6. It is also to be remembered that even Mr. Digby opposes a prohibition on the importation of shuttle stallions: "*Who is suggesting that shuttle stallions be banned? ...I wouldn't say that and I wouldn't agree with it. I would fight it like hell*".<sup>406</sup> His argument was that AI should be permitted in addition to natural service; that breeders should have a choice, not that Australian breeders should be prohibited from using shuttle stallions.<sup>407</sup>

132.7. It cannot be assumed that the owners of high quality international stallions would provide semen from those stallions to Australian breeders for the purposes of AI, in circumstances where the International Agreement had not been altered.<sup>408</sup> If Australian mares were unable to breed with high quality bloodlines from the Northern Hemisphere, there would be a decline in the quality and prestige of Australian bred Thoroughbreds which would have a significant adverse impact on those involved in the export of Thoroughbreds from Australia. It would also tend to lower the prestige of the Australian racing industry as a whole.<sup>409</sup>

132.8. In any event:

- (a) The experience of the Standardbred industry demonstrates that widespread use of AI does not eliminate the need or demand for shuttle stallions.<sup>410</sup>
- (b) Equine semen is totally different to that of cattle and other animals. It is very susceptible to deterioration and deteriorates quickly.<sup>411</sup>

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<sup>401</sup> T3075.22 (Digby).

<sup>402</sup> T3076.42 (Digby).

<sup>403</sup> T3076.44 – 3077.1 (Digby).

<sup>404</sup> T3772.24 – 41 (Ford).

<sup>405</sup> T3077.29 – 3078.8 (Digby).

<sup>406</sup> T3069.3 – 19 (Digby).

<sup>407</sup> T3067.11 – 3067.44, 3069.21 – 39 (Digby).

<sup>408</sup> WIT.ARB.002.0007 at [33] (Ford).

<sup>409</sup> WIT.ARB.002.0007 – 0008 at [34] (Ford).

<sup>410</sup> WIT.ARB.001.0004 at [24], 0005 at [27] (Bagshaw); T3078.17 – 35 (Digby); T3696.34, 3697.37 (Bagshaw).

- (c) Chilled semen can usually only be used successfully for up to 24 hours, with 48 hours from the time of collection being an absolute maximum.<sup>412</sup>
- (d) In the Standardbred Industry, despite the widespread take-up of AI, chilled semen is not imported from the USA or Europe, or from anywhere besides New Zealand.<sup>413</sup> It was tried 5 or 6 years ago with one stallion from the USA, but it was not commercially successful and it has not been tried since.<sup>414</sup>
- (e) Frozen equine semen can be transported from the USA and Europe, but it is far less popular due to the lower pregnancy rates (a significant commercial disincentive for breeders) and the fact that a number of the better stallions have semen that cannot be frozen and used successfully.<sup>415</sup>

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<sup>411</sup> WIT.ARB.001.0002 at [13] (Bagshaw); T3123.18 – 28 (Digby); T3700.1 – 30 (Bagshaw); T4324.24 – 4325.35 (Dr. McKinnon)

<sup>412</sup> WIT.ARB.001.0002 at [14] (Bagshaw); T4326.44 – 4327.5 (Dr. McKinnon).

<sup>413</sup> WIT.ARB.001.0003 at [15], [17] (Bagshaw); T4326.28 (Dr. McKinnon).

<sup>414</sup> WIT.ARB.001.0003 at [16], 0004 at [26] (Bagshaw); T3697.41 – 3698.4 (Bagshaw); T4322.42 – 4323.6, 4326.29 – 36 (Dr. McKinnon).

<sup>415</sup> WIT.ARB.001.0003 at [19] – 0004 [23], 0005 at [26] (Bagshaw); T3079.21 (Digby); T3697.27, 3698.20 – 34 (Bagshaw).