

SUBMISSIONS OF COLIN DORBER
TO
THE RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE
29TH September 2003

PRELIMINARY

- 1 The Rural and Regional Affairs Transport Legislation Committee ("the Committee") has refused Mr Colin Dorber ("Mr Dorber") the opportunity to further address the Committee in person. As such Mr Dorber has not had an adequate opportunity to be heard and questioned with respect to many matters. Such circumstances should be taken into account by the Committee in formulating any report.

- 2 Mr Dorber has not been provided with various documents including:
 - (a) the letter of instruction AWI provided to PricewaterhouseCoopers (PWC);
 - (b) the representations made and information provided to PWC (forming the basis of their report);
 - (c) the legal advice, or statement of legal opinion, of Minter Ellison and/or the Australian Government Solicitor in relation to whether the AWI breached the SFA in the period during which Mr Dorber was in office.

Accordingly, these submissions are made without the benefit of such material.

- 3 It is apparent that unfavourable media reports and publications have formed the basis of many of the matters the subject of this inquiry. The media reports have instilled in many people of relevance an unwarranted sense of mistrust of Mr Dorber. Mr Dorber is obtaining legal advice with respect to potential defamation proceedings with respect to the publications.

In fact the achievements of the new organisation under Mr Dorber's leadership were significant. These have been largely unreported and have certainly not been acknowledged in the Committee's process. Any objective review of the AWI during this

period, requires an objective and balanced appraisal rather than the biased, media-driven approach evident to date.

SUBMISSIONS

- 4 Many of the incidents that form the basis of the Committee's inquiry are to be found in the "Australian Wool Innovation Limited - Forensic Review of Financial Operations" report issued by PWC dated 16 April 2003.

It is evident in the disclaimer of that report that "...reliance has been placed upon the representations, information and instructions provided to us. We have not sought to verify the accuracy or completeness of the information made available to us, nor have we conducted any procedures in the nature of an audit of the information or assumptions therein in any way, other than has been specifically stated in this report."

This is a significant disclaimer that the Committee must take into account.

- 5 As mentioned, Mr Dorber has not been provided with a copy of the letter of instruction to PWC nor have any details been provided with respect to the representations, information or instructions provided to PWC.

In order for the Committee to formulate a report on the basis of the matters raised in the PWC report, it would have been prudent to allow Mr Dorber the opportunity to respond to the matters raised in such report. It is not the intention of Mr Dorber to in any way question the integrity of PWC. It is the obvious contention though that PWC may have been limited with respect to the instructions it was provided and indeed with respect to the material that was made available to it. It is certainly evident that the PWC report was completed without the authors of such report having had the benefit of interviewing Mr Dorber. Given the limited timeframe within which the Committee has required Mr Dorber to operate, it has not been possible for Mr Dorber to engage a professional expert in order to address the PWC report, and otherwise respond. It is not prudent for the Committee to rely upon the contents of the PWC report as proven facts (see further paragraphs 78 – 81 of these submissions).

- 6 It is evident from the Hansard of 26 June 2003 that the legal advice of Minter Ellison and the Australian Government Solicitor has been provided or is due to be provided,

respectively. It is noted that non-specific allegations of a legal nature have been made against Mr Dorber. In order for the Committee to adequately and fairly report on the basis of its inquiry it would have been prudent to provide Mr Dorber with a copy of such advices or at the very least a summary of the legal opinion that is relied upon which arises from such advices. The members of the Committee would of course be aware that legal opinion differs and it would be prudent to afford Mr Dorber the opportunity to respond to any such legal opinions expressed by those engaged by the current AWI Board.

Mr Dorber has not been afforded the opportunity to respond to such legal conclusions. Accordingly, if the Committee intends relying upon any such report or advice (including specifically the PWC report, any legal advice of Minter Ellison and/or the Australian Government Solicitor and the report of Frontiers Insight) the Committee must note that Mr Dorber has not been afforded the opportunity of adequate response (by the engagement of professionals).

It is not prudent for the Committee to rely upon conclusions at law that have been proffered by one party only.

- 7 As to the remainder of these submissions reference shall be made to the topic that has been raised and, where Mr Dorber has previously made a submission in response, reference shall be made to such submission.

RESPONSE TO AWI SUBMISSIONS OF 11 AUGUST, 2003

CSIRO PROPERTIES

- 8 In relation to the first sentence of paragraph 5.4 of the submissions, (relating to Mr Dorber's statement during the public hearing on 26 June 2003 that proceeds of sale could be spent without reference to the SFA) Mr Dorber was merely expressing his opinion with respect to the operation of the SFA. The Committee has not been presented with legal advice with respect to the operation of the SFA. If such a legal opinion has been provided, it has not been forwarded to Mr Dorber.

The extract recited in paragraph 5.3 of the submissions is to be read in the context in which it is provided. Mr Dorber was merely providing an example. It is inappropriate to

link such an example to funds that were the subject of the inquiry because the proceeds of the sale of the CSIRO properties have not yet been received by AWI.

It would be necessary for any AWI Board to obtain specific legal advice with respect to the classification of such funds and their categorisation regarding the SFA. This is a complex area that requires a detailed analysis of the Ministerial Declaration of 18 December 2000. In the absence of the disbursement of the funds the subject of the CSIRO properties, and the absence of any specific legal advice in this regard, it is simply inappropriate to make any adverse finding.

UNEXPLAINED PAYMENTS – Cromer High School, NSW Sports Council

- 9 In relation to paragraph 5.5 of the submissions (re donation of \$4033.20 to Cromer High School), in October 2001 negotiations commenced with the Northern Beaches Secondary College for a pilot wool education program at the Cromer Campus.

Simultaneous negotiations had also commenced in other Australian states. An agreement was reached that a donation would be made to the Cromer Campus for use as determined by the school in return for the direct participation by the campus in the development of the pilot program. This would have required the release of a head teacher and other staff to work with AWI staff. The project was underpinned by detailed research provided to the AWI Board. Prior to any payment Mr Dorber sought and received the approval (with respect to the payment) from the Chair of the AWI Board with respect to Cromer High School and other schools.

- 10 In relation to paragraph 5.6 (re donation to NSW Sports Council for the Disabled), it was part of the corporate citizenship of AWI to support the broader rural community and to promote wool growers. It is certainly acknowledged that this application of funds is more strategic than specific. Such a payment was of use with respect to creating the identity of AWI within the community. There is no suggestion that this payment was in any way of a personal nature with respect to Mr Dorber or any other person. The payment was made in accordance with Mr Dorber's written delegation.

- 11 In relation to paragraph 5.7 the referenced payments with respect to Cromer High School and the NSW Sports Council for the Disabled (and indeed a payment to the Bathurst Museum, care of Charles Sturt University) were for the benefit of Australian

wool growers. Mr Dorber concurs with the opinion of the Board that the SFA requires that payments must be spent efficiently, effectively and ethically and for the benefit of Australian wool growers and maintains that the reference payments were in accordance with SFA.

- 12 With respect to paragraph 5.8, Mr Dorber did not respond to the letters referenced at tab 3 of the submissions on the advice of his legal representatives. Mr Dorber had been advised that the terms of the Deed of Release precluded him from making any responses requested.

34 PROJECTS - \$14,342,846 – no executed contracts

- 13 With respect to the first sentence in paragraph 5.11 (re 34 projects being identified), it is contended that the PWC report is inaccurate. Reference is made to Appendix 1 of the 7 May, 2003 report of PWC.

In any event it is acknowledged that various projects were approved without executed contracts. Such an occurrence must be viewed in context, having regard to the procedures that were in place at AWI in the relevant period. Projects were formally referred to Mr Dorber for approval under his delegation during November 2002. The process then required that the projects, once approved, proceeded to the legal department for negotiation and completion of contracts. Such a task was undertaken by other officers within AWI, contracted lawyers and the legal department of AWI (not Mr Dorber). Consequently, it was commonplace to “approve” projects prior to contract completion.

In relation to the suggestion that advance payments were made, it is acknowledged that Mr Dorber approved advance payments in the sum of \$3,420,478 prior to 1 December 2002 (based on the PWC audit report and letter dated 7 May 2003 addressed to the Finance and Audit Committee C/- Les Targ, AWI). All such payments were made pursuant to contract, letters of agreement or board approval.

- 14 In relation to paragraph 5.12, with respect to letters of agreement, Mr Dorber was relying upon AWI internal legal advice which was to the effect that advance payments could be made on specified projects where letters of agreement had the effective force of a contract (including a clause which required refund of all funds in the event that

negotiations could not be completed). It is appreciated that the current Board does not approve of such dealings. It is of significance though that the former Board (during Mr Dorber's appointment) did approve of such dealings under certain conditions, particularly where complex negotiations had to be undertaken.

With respect to the contention that "letters of agreement did not cover all uncontracted projects", it is prejudicial to Mr Dorber for such a statement to be made without listing any projects that are referred to. It is acknowledged that the Farmhand Appeal donation matter is an exception and an explanation has been and will be provided in relation to this. Mr Dorber is not aware of any other project that is not covered by letters of agreement, contract or other Board approved authority.

- 15 With respect to paragraph 5.13, it is submitted that these submissions reflect those of Mr Dorber in as far as letters of agreement were necessary with respect to certain projects pending the conclusion of negotiations regarding matters such as intellectual property rights.
- 16 With respect to paragraph 5.14 (re financial records not matching financial commitments) Mr Dorber refutes the first sentence and says further that every month each Board member received extensive documentation with respect to matching financial commitments to financial records. Such a process was approved by the auditor, PWC, and managed by the Chief Financial Officer of AWI. At all material times Mr Dorber submits that the Board had a register of Board approved projects and monthly financial reports disclosed financial commitments accurately. It is of significance that a copy has been tabled to the Committee.

It is of further significance that Mr McCluskey, Partner of PWC, was the appointed auditor during all material periods during which Mr Dorber held office.

BOARD RE-ELECTION CAMPAIGN at AWI expense (i2K & David Everist)

- 17 In relation to paragraph 5.19 Mr Dorber refutes that his conduct with respect to election campaign expenses and the October 2003 AGM was not in the best interests of AWI. The Board of AWI formally resolved in July 2002 that Mr Dorber, as Managing Director of AWI, would address all public comments and promote and represent the interests of AWI Limited up to the conduct of the AGM. Mr Dorber was also delegated to conduct all

matters with respect to the ballot. Mr Dorber was acting in accordance with the authority of the Board.

- 18 With respect to paragraph 5.20 Mr Dorber did not lead a campaign for the re-election of the existing Board. Mr Dorber did not promote the Board members nor undermine other candidates. Mr Dorber did vigorously promote the successes of the company under its then Board as directed.
- 19 With respect to paragraph 5.21 Mr Dorber acknowledges that he did engage Mr David Everist to attend the Victorian Rural Press Club prior to the AGM in October 2002. (It is noted that the e-mail allegedly from Mr Dorber to Mr Everest dated 17 October 2002 was not presented to Mr Dorber at the public hearing.) Mr Dorber acknowledges that he did provide Mr Everist with some suggested questions and issues that would ideally be raised in such a scenario. These questions were not, in any event, asked by Mr Everist.

The FARMHAND Donation matter

- 20 Reference is made to paragraphs 13-21 of the 17 June 2003 submissions. Further, reference is made to pages 7, 37 and 38 of the 26 June 2003 Hansard.
- 21 The allegation that the alleged donation to the Farmhand Drought Appeal constituted a breach of the SFA is refuted. Mr Dorber acted on the interpretation of the SFA (which highlights the need for the Committee to ideally receive independent legal advice if any ultimate report is to be made in this regard) that in order to breach the SFA a claim for funds must have been made in accordance with schedule 1, paragraph 2 of the SFA. No claim had been made and no request for reimbursement to the Commonwealth had been submitted. It was the view of the AWI and its advisors of that time, that the restrictions upon expenditure imposed by the SFA applied only to sums that were to be reimbursed pursuant to the SFA. Other expenditures were permissible provided that they were not to be matched by the Commonwealth pursuant to the SFA.

The present Chair has announced that the current Board has determined that all expenditures will comply with the SFA requirements. This is a policy decision completely within the power of the current Board. Certainly neither Mr Dorber nor the first Board ever received advice (either from PWC or the Department) that the policy adopted by the first

Board was either improper or unlawful.

It is also relevant to note that for many months since Mr Dorber's dismissal, accusations have been made in the press that payments made by AWI under Mr Dorber "may" have breached the SFA. The repeating of this accusation, although not based on authoritative opinion, has raised very damaging imputations of dishonesty and poor governance. Such imputations have also been made before the Committee. They are unwarranted and they are prejudicial.

22 In relation to paragraph 5.25 Mr Dorber acknowledges that the Farmhand donation matter involves behaviour that may amount to poor judgment. In particular, such behaviour includes:

- i. the announcement of the donation prior to formal contractual agreement. Further, Mr Dorber acknowledges that the use of the word "*donation*" was incorrect but, at the same time, he had not expected Mr Alan Jones to read verbatim the e-mail requesting negotiations in relation to the intended projects to be funded by AWI. In a brief e-mail the use of the word "*donation*" precluded the reference to the rather complex means by which funds could be provided; and
- ii. that the processing of the payment was inappropriately managed.

23 At all times the matters with respect to the Farmhand grant were transparent.

24 The Farmhand grant was conditional upon specific requirements that were consistent with AWI goals.

25 As to the matters specifically raised in the second sentence of paragraph 5.25 of the submissions (re Mr Dorber allegedly stating that a contract had been executed with the Red Cross), Mr Dorber denies the statement of fact therein. Indeed, Mr Dorber calls for the production of the 6 November 2002 Board meeting transcript in support of his position.

26 In relation to matters in paragraph 5.26, Mr Dorber denies that he attempted to initiate stop payment of the cheque (as suggested in 5.26(b)). The upshot is that Mr Dorber did, on his own initiative, recover the funds. It is of significance that Mr Dorber took

action to rectify the matter as soon as it was evident there was a problem. Should the Committee consider that further investigation in relation to this matter is required, the evidence of the Finance Director of the Australian Red Cross would show that it was Mr Dorber who insisted upon and obtained the return of the funds.

SHEAR EXPRESS

- 27 Reference is made to paragraphs 39, 40 and 41 of the 17 June 2003 submissions. Further, reference is made to page 36 of the 26 June 2003 Hansard.
- 28 On 26 June 2003 Mr Dorber tabled a 33 page AWI board minute. At all material times, it was agreed that Mr Dorber should be the chairman of Shear Express. Mr Dorber announced publicly that he was going to undertake the role. His legal advice was that he could undertake the role. i.e.).
- 29 At the time of the 26 June, 2003 public hearing, Mr Dorber became aware that the Shear Express Director's fees overpayment issue specifically related to him. Further to the public hearing on 26 June 2003 Mr Dorber has sought and been provided with confirmation by his accountant that he did in fact receive \$24,060.50 representing Director's fees for a 15 month period. Mr Dorber, contrary to his legal advice (with respect to the Deed of Release), acknowledged his moral obligation to refund the money and has indeed done so. The funds were refunded by Mr Dorber on or about 14 September 2003.
- 30 In relation to the matters that are otherwise raised in the submissions, Mr Dorber does not agree with the version of events as set out in paragraph 5.28 and notes that the author of the submissions was not present throughout the events that are referenced.
- 31 In relation paragraph 5.29 of the submissions Mr Dorber does not have any recollection of having ever received the remittance advice referred to.
- 32 In relation to paragraph 5.30 it is noted that Minter Ellison wrote to Shear Express, not to Mr Dorber. Mr Dorber maintains that the Chairman of Shear Express initiated recovery the funds after the public hearing on 26 June 2003. Reference is made to paragraph 5.31 of the submissions in as far as references are made to correspondence on or about 9 July 2003 (after the June 2003 public hearing).

- 33 The matters raised in paragraph 5.32 are perhaps an indication of the misguided flavour with respect to the campaign against Mr Dorber. It is acknowledged in the submissions that Mr Dorber “may” have been telling the truth. Indeed, Mr Dorber was at all times telling the truth and it is evident that the campaign against Mr Dorber is unwarranted.

ADVANCE/ OVER-PAYMENT OF DIRECTORS FEES

- 34 Reference is made to paragraphs 48 & 49 of the 17 June 2003 submissions.
- 35 With respect to the matters raised in paragraph 5.33 – 5.35 of the submissions, matters are ongoing between Mr Dorber’s legal advisors and those of AWI. So as to assist the Committee with respect to this inquiry, Mr Dorber maintains (as would be evidenced from the most recent letter from his legal advisors (Carroll & O’Dea) to the AWI) the subject payment (\$8,907.67) is governed by the Deed of Release (ie that Mr Dorber is not under any obligation to repay the amount as it was within the contemplation of the parties as at the date of the Deed of Release).

TERMINATION OF LUKE & HOLLY DORBER

- 36 In relation to paragraph 5.36, Mr Dorber denies that the Board advised him that “no decision was being taken as to his children’s continued employment with AWI”. Mr Dorber acknowledges that the Board did express the view that it is an “*unwise practice to employ one’s relatives in a public company*”.

Mr Dorber’s decision to retrench his own son and daughter as employees of AWI in November 2002 was one that was clearly within his delegation. On 23 June 2003 the Committee was provided with the delegation to which Mr Dorber refers. The Committee is referred to the section of that delegation which deals with employment related issues. It is clearly within the delegation that the Managing Director (Mr Dorber) is entitled to make decisions with respect to the matters that pertain to his children.

In relation to any suggestion with respect to the termination of Mr Dorber’s children being an inappropriate exercise of discretion, the Committee is encouraged to consider that extreme hostility was directed toward the former Board and Mr Dorber under circumstances of the pending election. On balance, Mr Dorber chose to exercise his discretion in the manner in which he did as there were real concerns with respect to likely

intimidation and harassment such employees (his children) would be the subject of, should their positions have been maintained. Reference is made to attachment 13 to Mr Dorber's submissions of 25 June 2003. The Committee is respectfully reminded that such attachment is confidential.

37 As to the matters that are otherwise raised in paragraphs 5.36 – 5.41, the status of Holly's employment in 5.37 is simply inaccurate.

38 Otherwise, the allegations are otherwise scandalous. Mr Dorber was acting within his authority and exercised his discretion having regard to all considerations under the very difficult and unusual circumstances that existed in the environment of political conflict.

TRAVEL COSTS

39 Reference is made to paragraph 51 of the 17 June 2003 submissions.

40 Any wrongdoing on the part of Mr Dorber is denied.

YORK STREET

41 Reference is made to paragraph 25 of the 17 June 2003 submissions, and page 8 of the 26 June 2003 Hansard.

42 Mr Dorber denies that he was ever untruthful to the AGM and/or shareholders. The incident with respect to the York Street property was an occurrence whereby Mr Dorber was simply reporting to the AGM and/or shareholders the facts as he had been advised.

43 As to the matters raised in paragraph 5.43 of the submissions, Mr Dorber maintains that he was relying upon a report from the Operations Manager. Mr Dorber referenced that report in an e-mail to Directors prior to that meeting. A thorough review of company documentation (to which Mr Dorber does not have access) would reveal not only the report but the e-mail as well. What was reported to Mr Dorber, by the Operations Manager, was that the real estate agent for the lessee had confirmed in writing that it was to take the lease. This was the information upon which Mr Dorber operated.

44 The subsequent failure of the proposed lessee to complete the contract (as a result of a disagreement over removal of items from the site) created the false impression that Mr

Dorber lied or otherwise misled the AGM and/or shareholders.

EMPLOYEE NUMBERS

- 45 Reference is made to paragraph 25 of the 17 June 2003 submissions, and to page 8 of the 26 June 2003 Hansard.
- 46 Mr Dorber was not untruthful to shareholders about the number of full time permanent AWI employees at the date of the 2002 AGM.
- 47 In relation to paragraph 5.46 of the submissions it is significant to take into account that the staffing of AWI was fluid and AWI was in a growth stage. In any event, it is of significance that Mr Dorber did not, before the AGM, make any reference to employee numbers. There are different categories of employees and it is noted that tab 13 and tab 14 annexed to the submissions have not been made available to Mr Dorber. Mr Dorber would not and does not have any motivation to mislead any party with respect to employee numbers.
- 48 As to paragraph 5.47 of the submissions it is to be noted that Mr Dorber said in addition to the quotation from the Hansard (as set out in the submissions) "*... but we also had contracted project managers – they have staff as well, of course. AWI's permanent full time staff grew quickly*". For the current AWI to have selectively quoted Mr Dorber as they have in the submissions is an example of the underhanded manner in which this matter has been addressed.
- 49 As set out in paragraph 26 of the 17 June 2003 submissions, Mr Dorber at all times acted in accordance with the law and any other document that set parameters to Mr Dorber's then position. In the event that any person or body suggests that any provision of the constitution, corporations law, statutory funding agreement, board approved delegations and/or any other document has not been complied with, the Committee is encouraged to have such persons specifically describe the nature of any such infringement such that Mr Dorber can consider such a matter and respond to it.

INNOVAR SCORING SYSTEM

50 In relation to paragraph 5.53 Mr Dorber denies that the Innovar scoring system does not have any application to "off farm" projects. It was the only system available pending the development of a new tool. It was not ideal at the time Mr Dorber was in office but it was his view, and that of his board, that it was adequate. The matters referred to in paragraph 5.53 with respect to specific examples as to the applicability of the scoring system is a distortion of the true circumstances, noting that over 300 projects were on foot.

PETER ANDERSON ISSUES

51 Senator Ferris raised allegations about Mr Peter Anderson with respect to:

- (a) a \$50,000 European research trip;
- (b) a \$1,000,000 contract for "some form of IT services";
- (c) payments of \$10,000 for confidential work.

52 Reference is made to pages 4, 33 and 34 of the 26 June 2003 transcript. A summary of Mr Dorber's submissions in this regard is as follows:

- (a) Senator Ferris abused the privileges of the high office she holds by making unsubstantiated and ill informed comments in this regard for the purposes of political point scoring;
- (b) The allegations are untruthful, deceiving and misleading;
- (c) With respect to Mr David Trebeck the Committee must take into account that he is a close personal friend of Ferris and a business associate of McLachlan;
- (d) Anderson was not a referee for Mr Dorber in relation to his appointment to AWI (Mr Dorber was "headhunted". A copy of his "CV" was later provided upon enquiry by various people as to his credentials. The CV attached a list of referees which included Anderson.);
- (e) Anderson did not receive funding from AWI to travel to Europe and did not in fact

travel to Europe on behalf of AWI;

- (f) With respect to the \$1,000,000 consultancy claim this is “malicious, mischievous and untrue.” Anderson did not receive any funds in the nature of \$1,000,000 with respect to IT services (as now acknowledged in paragraph 5.59 of the submissions – yet another example of the campaign of untruths and half-truths carried out against Mr Dorber);
- (g) Anderson did not receive monthly payments of \$10,000 “for which there was either no documentation or disclosure to the company and its board about work being done”. Anderson did receive some payments, but payments were always made on a full disclosure basis, and with the approval of the then Board of AWI. Reference to the PWC report shows that all such payments were transparent and “above board” contrary to the implications made;
- (h) Anderson did provide a report with respect to pesticide residues in Australian wool exports to the European Union. Such a report has been tabled (with the Committee) by Mr Dorber;
- (i) The report was in accordance with the SFA in as far as the report was of direct concern with respect to a matter that had a direct impact upon wool growers in Australia.

APPROACHES BY AWI TO DORBER ETC

53 In relation to paragraph 5.60 of the submissions, as previously addressed, the letter concerning the overpayment of Director fees was indeed sent to the Managing Director of Shear Express.

54 In relation to paragraph 5.61, these matters have previously been addressed.

In relation to paragraph 5.62, Mr Dorber denies that, “*through his lawyers... he refused to cooperate*”. On the contrary, Mr Dorber offered to meet in order to resolve the matter. Such a meeting was subject to various conditions. The conditions were not ultimately agreed with AWI and their legal representatives. Mr Dorber has never refused to participate in any matter.

LETTER TO SHAREHOLDERS

55 Reference is made to the second bullet point of paragraphs 25, & 31-38 of the 17 June 2003 submissions, and to page 8 of the 26 June 2003 Hansard. Such matters are an example of the political environment within which the AWI operated.

LACK OF RESPECT TO SHAREHOLDERS

56 Mr Dorber contends that claims that the former AWI board showed a lack of respect to shareholders were made as part of a political campaign to destabilise the former AWI board in a climate of longstanding political mistrust engendered by wool industry political bodies who deeply resented the decision of wool growers to establish AWI Pty Limited as a corporate entity free of the previous control exercised by those political bodies.

The Committee is encouraged to consider the possibility of these circumstances and to have particular regard to the various matters which demonstrate the former board's commitment to informing shareholders. Such matters include the bi-monthly publication, circulation of strategic plans and operating plans to shareholders, regular informal shareholder meetings and various other matters as set out at page 7 of the 17 June 2003 submissions.

AUDIT CERTIFICATE

57 In relation to paragraphs 6.2 – 6.4 of the submissions, it is of significance that the accounting period 2001/2002 only relates to a four month period. Further, it is of significance that during this time all accounts were managed by Australian Wool Services Limited and the Woolmark Company based in Melbourne. AWI took control of its own financial management from early in the 2002/2003 financial year.

GYMNASIUM ISSUES

58 In relation to paragraph 6.12 of the submissions it is significant that the gymnasium was for the unrestricted benefit of all staff whether they be executive or otherwise. It was not a gymnasium for the exclusive use of executives. Each staff member was required to contribute \$15.00 per fortnight with respect to recouping the initial outlay of \$47,750.00. The cost of the trainer (\$113,400.00) was considered an appropriate expenditure taking into account matters such as occupational health and safety. The

Board, at all times, approved such expenditures. The trainer was available to all staff who used the gym.

- 59 Claims that taxpayer funds have been misused or that establish breaches of the statutory funding agreement have been identified have no basis in fact and appear not to have been properly investigated. They have been generalised imputations and no evidence has been offered that establishes the allegations as truth.

The following submissions specifically relate to the subject heading which is herein provided:

Administration of the statutory funding agreement (SFA)

- 60 Reference is made to pages 5 and 6 of the 26 June 2003 Hansard with respect to the submissions that have previously been made by Mr Dorber in relation to the administration of the SFA.
- 61 It is the overriding submission that the administration of the statutory funding agreement is complex and is "not properly understood by this committee". In particular, the assertion that matching government funds are sent to AWI without proper accounting, or in advance of their expenditure, is untrue.

Project management

- 62 The AWI, throughout the period of Mr Dorber's appointment, did design, develop and implement a complex and detailed project management and assessment tool known as the "innovar model". It was used for almost every project and concept assessment from May 2001 (two months after AWI commenced operation).
- 63 Reference is made to paragraphs 4, 5, 6 and 7 of the 17 June 2003 submissions with respect to compliance with the statutory funding agreement.

AGRI – political activity and expenditure

- 64 Reference is made to paragraphs 8, 9 and 10 of the 17 June 2003 submissions which are repeated at page 6 of the 26 June 2003 Hansard.
- 65 At no time during Mr Dorber's appointment as managing director were any funds of AWI expended on AGRI political activity other than those funds authorised in accordance with

the SFA.

Matching funds – eligible R & D activity

66 Reference is made to paragraphs 11 and 12 of the 17 June 2003 submissions which are repeated at page 6 of the 26 June 2003 Hansard.

67 At no time was a claim submitted for matching funds other than in respect of eligible R & D activities.

Deed of Release between Mr Dorber and AWI

68 Reference is made to paragraphs 22, 23 and 24 of the 17 June 2003 submissions. Further, reference is made to page 7 of the 26 June 2003 Hansard.

69 It is submitted that a carefully calculated political campaign may well have been brought against Mr Dorber under circumstances where those behind such a campaign relied upon the protection that the Deed of Release provides.

70 It is noted that the Deed of Release, contrary to the standing orders of the Committee, has been made available as a public document.

Corporate governance issues – “the failed AGM”

71 Reference is made to paragraph 25 of the 17 June 2003 submissions which are repeated at page 8 of the 26 June 2003 Hansard.

72 It is of significance to establish that there was never a “*failed AGM*” with respect to AWI. As at 1 January 2001 an entity known as Australian Wool Services Limited had subsidiaries: Australian Wool Innovation Pty Limited and the Woolmark Company. On and from 1 May 2002, AWI (the company the subject of this inquiry) was created. AWI has only had one AGM (that being of October 2002). AWI has not ever had a “*failed AGM*”.

A complex issue arose with respect to Australian Wool Services Limited's failure to allocate Directors duly appointed with respect to the usual “*A/B allocation*”. Upon the creation of AWI, this oversight complicated matters. It was indeed Mr Dorber (then a member of AWI Pty Ltd Board) who brought this to the attention of his Board. AWI Pty

Ltd then brought the matter to the attention of Australian Wool Services Limited's Board. Legal advice was then sought in relation to this matter and the matter was resolved without the involvement of Mr Dorber.

Political pursuits

- 73 Mr Dorber maintains that there is a campaign against the former board of AWI which is:
- (a) motivated by the politics of the industry;
 - (b) designed to create prejudice in the minds of shareholders and government against former board members of AWI Limited; and
 - (c) is based on untruths, distortion of facts and misinformation.
- 74 As an example of the documentation in support of the contentions in this paragraph, reference is made to annexure "A" hereto which is a document prepared by Mr Dorber on the advice of Mallesons Stephen Jaques, solicitors for AWI, in the lead up to the October 2002 election. The references in that document to "*fiction*" are matters that had been raised by the shareholder candidates/WoolProducers. These fictions were circulated by WoolProducers and the State Farm Organisations by way of media releases, newsletters and reports to Members. Annexure "B" to this submission is a document entitled "*Who's Pulling the Wool Over Who's Eyes?*". This document was, on the advice of Mallesons Stephen Jaques, necessary to publish in view of the serious attempt by some wool producers to undermine the then AWI Board by making accusations which, if substantiated, would have amounted to breaches of the SFA and/or corporate governance. This is yet another example of the political environment in which Mr Dorber was operating. Annexed hereto as annexure "C" is a further document that was published by AWI in or about July/August of 2002 with respect to allegations that were raised by WoolProducers - that the 1999 report of the Wool Industry Future Direction Taskforce, headed by Ian McLachlan, was not being complied with.

Project management and advanced payments

- 75 Reference is made to paragraphs 44 and 45 of the 17 June 2003 submissions.
- 76 The PWC report generally references a number of matters which are identified as "Project Management Issues". Generally, the controls and procedures were upgraded and implemented as the company grew. This is consistent with any start-up business. All suggestions made by PWC were implemented.

The PWC audit report of 16 April 2003

- 77 Reference is made to Mr Dorber's submissions at paragraphs 27, 28, 29 and 30 of the 17 June 2003 submissions. Further, reference is made to page 9 of the 26 June 2003 Hansard. It is significant that PWC did not at any time raise with management, the finance and audit committee or the board any allegations or suggestion of improper conduct or appropriation of funds.

Further, the audited accounts of the company were presented to the shareholders (2001-AWS Limited, 2002 AWI shareholders) and were adopted without dissent. Evidence that the audit of accounts were accepted without dissent can be found in the Annual Report of AWI.

- 78 It is also of significance that in September/October 2002 PWC reported in writing to the Board concerning the financial management of the company. The report found that proportional to the exponential growth of the company, the financial affairs of AWI were properly and prudently managed. The report made a number of recommendations concerning processes, all of which were received, implemented and monitored by the finance and audit committee of the board. The September/October 2002 PWC report can be produced upon the request of the Committee.
- 79 It is significant that the partner responsible for the production of the annual audited accounts of AWI, was Mr Doug McCluskey. Mr McCluskey sat on the Finance and Audit Committee of the Board (for which PWC was duly remunerated).
- 80 There are substantial problems with the language of the PWC report and the evidentiary

basis of some of its findings:

- a) Non-specific data referenced as being provided;
- b) The “unusual or poorly substantiated payments” referenced (p 4) are based upon limited and non-specific documentation;
- c) With respect to the SFA the report is not conclusive as to whether payments are contrary to the SFA (see p 5 “**potential** inconsistency” and “**may** be inconsistent with the SFA”; eg pp 9, 12, 14 (x 2), “obtain legal advice **as to whether** the use of funds...is inconsistent with Section 5 of the SFA;) This language is very prejudicial and it is inappropriate;
- d) Limited interviews were conducted by PWC investigators. No interview was conducted with Mr Dorber. The statement that “the payments identified in this report were made based on instructions given by Mr Dorber” (p 6) is an inadequate, unchallenged basis upon which to draw conclusions;
- e) It states that matters have been referred to AWI’s legal advisors but no such legal advice (nor a definitive statement of breach) has been produced;
- f) Investigations are in part incomplete (eg p 20 re the Line Communication matter) “... further information could be conducted ...”;
- g) Various matters relate to the ongoing management of the company.

Incident re: Rowley

81 Mr Rowley was interviewed by Mr Dorber in November 2002 and Mr Dorber told Mr Rowley that he no longer had his confidence. Mr Rowley occupied a senior position and Mr Dorber discussed with him the options of termination or resignation. Mr Rowley resigned in writing on terms agreed. This was a matter that again was within the delegation of the Managing Director and there was no positive obligation upon the Managing Director to obtain the approval of the Board with respect to matters of employment. The only information Mr Dorber passed to the Board was that Mr Rowley had resigned. As to the allegation that the full circumstances were not provided by Mr Dorber to the Board, it is of significance that notification of Mr Rowley’s resignation was

by way of memo. Prior to any opportunity (i.e. the next Board meeting) the Board was indeed informed by Mr Rowley himself of the circumstances with respect to his resignation. Mr Rowley informed the Board himself.

Payment of bonuses to Executives

82 A formal delegation was granted by the Board together with a pool of funds for the payments of performance bonuses. AWI entered into a contract with Remcin Pty Ltd to develop a performance appraisal bonus scheme.

This documented procedure was subsequently presented to the Board for (successful) approval. All payments in the 2002 year were made after a formal written appraisal including a review by direct supervisors and a review by the Managing Director. All findings were documented and payments were made against the approved pool funds.

With respect to the payment to Mr Dorber, this was made as a result of a determination by the Board of AWI. Mr Dorber was absent from those deliberations. Such approval was minuted in accordance with company practice.

Mr Dorber's departure from AWI

83 Mr Dorber was requested by Mr McLachlan to resign. Agreement was eventually reached and Mr Dorber signed a Deed of Release with respect to termination of his employment by AWI.

Actual employment of Luke and Holly

84 Luke Mr Dorber was employed in accordance with a process approved and managed by the Chair of the Board. The Operations Manager and the in-house company solicitor both approached Mr Dorber and said words to the effect "*we have been unable to find a suitable candidate to fill the role of Administration Manager, Special Projects and we would like Luke Mr Dorber to fill the position*". The Operations Manager had known and employed Luke Mr Dorber in another organisation. Mr Dorber initially rejected the request to employ his son. Some time later, the Operations Manager and in-house solicitor again requested that Luke Mr Dorber fill the position. The Operations Manager then suggested that the Chair of AWI ought to give the matter consideration having regard to the conflict of interest that could potentially arise if Mr Dorber were

to be involved in the employment of his son. The Chair subsequently conducted a formal selection process and a position was ultimately offered to Luke Mr Dorber. A review of Luke Mr Dorber's personnel file and associated Board minutes will substantiate these submissions.

85 In relation to the employment of Holly Mr Dorber, she was employed as a casual receptionist by the Operations Manager without referral to Mr Dorber. The Operations Manager had the delegation to undertake such a task having regard to the reasonably minimal salary of the position.

86 Her **subsequent full time employment** was on the recommendation of the Project Manager (Policy) and endorsed by the Operations Manager and the Chair of AWI (again without reference to Mr Dorber).

Attribution of costs to project expenses rather than overheads

87 Mr Dorber, in consultation with PWC, implemented a budgetary allocation practice in relation to costs in precisely the same manner as recommended by PWC in their letter of 7 May 2003 to the new AWI Board. That letter of 7 May 2003 includes the following text: "*AWI should consider allocating overheads to specific project expenses where possible*". This is consistent with the fact that the PWC partner, Mr McCluskey, was a member of the AWI Audit Committee.

\$500,000 to sole trader to produce film

88 Mr McLachlan, in his letter to shareholders dated 5 June 2003 (and consequently referred to by others in several publications), criticised Mr Dorber for poor documentation or exhibiting weakness in standard controls and procedures citing "an advance payment of \$500,00 to a sole trader in regard to the production of a film for the wool industry."

Rather than being an example of poor administration or governance, this was a contract that was awarded after a tender process. The contract was in writing. The initial payment was made on execution of the agreement and pursuant to its terms. Moreover, the producer is not a sole trader. It is a company. There is nothing untoward about a sole director company. It is permitted by Law and is common in the film business. Nor is there anything unusual in the making of a sizeable advance to the production company to fund

development and production. Further, it was the finding of PWC that "the film was designed to promote the Australian Wool Industry with a specific educational element. The SFA allows for the expenditure relating to education of wool and therefore, this project would not contravene the SFA."

PWC said the contract "has not been disclosed to the Board in the strategic or operating plans." This is misleading and carries the imputation that the project was improperly hidden from the board. In fact the board was advised of the project in writing and the Chair participated in the selection process.

Conclusion

Mr Dorber did not commit any illegal or unethical act in the conduct of AWI affairs. He admits that he may have committed errors of politics and diplomacy in his efforts to establish the company and assert the new direction with which he had been entrusted. At all times, his actions were within the terms of the power delegated to him by the Board.

It was inevitable that the policy decisions made by government and by the Board (and implemented by Mr Dorber), would have their critics. He did not shrink from this but always sought to operate the Company with transparency, both in respect of the Board and the shareholders.
