

BHP BILLITON LTD  
Form 6-K  
November 30, 2006

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**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**  
**Form 6-K**  
**REPORT OF FOREIGN PRIVATE ISSUER**  
**PURSUANT TO RULE 13a-16 OR 15d-16**  
**UNDER THE SECURITIES EXCHANGE ACT OF 1934**  
**November 29, 2006**

**BHP BILLITON LIMITED**  
**(ABN 49 004 028 077)**

**(Exact name of Registrant as specified in its charter)**

**VICTORIA, AUSTRALIA**

**(Jurisdiction of incorporation or organisation)**

**180 LONSDALE STREET, MELBOURNE,**  
**VICTORIA**  
**3000 AUSTRALIA**

**(Address of principal executive offices)**

**BHP BILLITON PLC**  
**(REG. NO. 3196209)**

**(Exact name of Registrant as specified in its charter)**

**ENGLAND AND WALES**

**(Jurisdiction of incorporation or organisation)**

**NEATHOUSE PLACE, VICTORIA, LONDON,**  
**UNITED KINGDOM**

**(Address of principal executive offices)**

Indicate by check mark whether the registrant files or will file annual reports under cover of Form 20-F or Form 40-F:  
 Form 20-F  Form 40-F

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T  
Rule 101(b)(1):

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T  
Rule 101(b)(7):

Indicate by check mark whether the registrant by furnishing the information contained in this Form is also thereby  
furnishing the information to the Commission pursuant to Rule 12g3-2(b) under the Securities Exchange Act of 1934:  
 Yes  No

If  Yes  is marked, indicate below the file number assigned to the registrant in connection with Rule 12g3-2(b): n/a

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Issued by:

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SIGNATURES

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

BHP Billiton Limited and BHP Billiton  
Plc

Date: 29 November 2006

By: Karen Wood

Name: Karen Wood

Title: Group Company Secretary

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NEWS RELEASE

**Release Time** IMMEDIATE

**Date** 29 November 2006

**Number** 32/06

**BHP BILLITON RELEASES FINDINGS OF ITS INTERNAL REVIEW INTO  
MATTERS RAISED IN THE COLE COMMISSION**

BHP Billiton today released the report of its internal review into the matters raised in the Cole Commission of Inquiry into the UN Oil for Food Program, and in particular the payment by BHP Petroleum for a shipment of wheat delivered to Iraq in 1996.

The report follows an announcement by BHP Billiton's Chief Executive Chip Goodyear on 19 January 2006 that the company would undertake a thorough review of the issues surrounding the shipment and would publicly release its findings.

Chief Executive Chip Goodyear said the release of the internal review report delivered on the company's commitment to provide a full and transparent account of the issues.

The conclusions reached by the internal review were consistent with Commissioner Cole's findings – that is that BHP and BHP Petroleum complied with Australian law and UN Sanctions. He made no adverse findings against the company.

At the time BHP Billiton was first named in Commission hearings, I said we would use this opportunity to review all of the events surrounding the shipment of wheat and look at current processes and practices to ensure that we meet the highest ethical standards in all our dealings. To do so is consistent with our Charter values and a fundamental plank of our licence to operate.

We will continue to improve our processes and practices even in the light of Commissioner Cole's conclusion that there is no basis for any adverse finding against the company and to that end I have adopted the recommendations from the report. Mr Goodyear said.

The internal review was conducted by a Steering Group appointed by Mr Goodyear, with support from external legal advisors Freehills and consulting expertise from Deloitte.

A summary guideline to the full report is attached. The full report can also be found at [www.bhpbilliton.com](http://www.bhpbilliton.com).

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Registered Office: 180 Lonsdale Street  
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3196209  
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A member of the BHP Billiton group which is headquartered in Australia

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Further information on BHP Billiton can be found on our Internet site: [www.bhpbilliton.com](http://www.bhpbilliton.com)

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**Internal Review Report of the BHP Billiton Steering Group  
United Nations Oil-For-Food Programme**

**Summary**

*(The full report can be found at [www.bhpbilliton.com](http://www.bhpbilliton.com).)*

On 19 January 2006, BHP Billiton announced it would undertake an internal review into the circumstances surrounding a shipment of wheat to Iraq in January 1996 and related events. In February, Chief Executive Officer, Chip Goodyear, appointed a Steering Group to undertake the internal review. The Steering Group was extensively supported in its work by Freehills, Deloitte, Tom Bathurst QC, and BHP Billiton's Internal Audit.

The key findings from the Internal Review Report are:

**The 1996 Wheat Shipment**

BHP Petroleum's objective was to develop its reputation and standing in Iraq (Pg 7).

The 1996 Wheat Shipment was approved by BHP, DFAT and the UN as a gift and was executed as a gift (Pgs 7 & 8).

In making the 1996 Wheat Shipment, BHP Petroleum acted consistently with UN Sanctions. The 1996 Wheat Shipment was not a bribe and did not breach Customs Regulations (Cth) or the Crimes Act (Cth) (Pg 8).

The 1996 Wheat Shipment was generally consistent with business conduct standards at the time (Pg 10).

The 1996 Wheat Shipment was not reformulated from a gift to a debt transaction by BHP Petroleum in 1996, or subsequently (Pg 15).

The draft letter of 21 June 1996 should never have been contemplated (let alone prepared), given DFAT's unequivocal rejection of the reformulation proposal. This reflected an error of judgment on the part of those involved, in particular Mr Stott (Pg 16).

**The 2000 Agreement**

Through the 2000 Agreement, BHP Petroleum purported to assign to Tigris something more akin to a debt than anything else. BHP Petroleum could not confer a right in Tigris to recover a debt from Iraq, because no debt existed (Pg 18).

BHP Petroleum did not appoint Tigris as its agent. In fact, BHP Petroleum expressly disclaimed any agency relationship (Pg 18).

BHP Petroleum did not act inconsistently with UN Sanctions by executing the 2000 Agreement or the 'To Whom It May Concern' letter because neither changed the original character of the 1996 Wheat Shipment. Nor did it breach the Crimes Act (Cth) (Pg 19).

The 2000 Agreement contained terms that suggested the 1996 Wheat Shipment was a debt transaction rather than a gift. This occurred because at least Messrs Davidson Kelly, Stott and Lyons failed to act with reasonable care. In the case of Mr Davidson Kelly, it is possible that his acts and omissions were motivated by other considerations, given that he later directly benefited from the assignment of the debt (Pg 21).

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**The events of 2004 and the subsequent debt recovery**

Neither BHP Billiton, nor BHP Petroleum, was involved in, or aware of, the steps taken by Tigris to recover the debt . BHP Petroleum never received any moneys in respect of the 1996 Wheat Shipment (Pg 24).

BHP Petroleum did not breach the Criminal Code Act (Cth) or Crimes Act (Vic), nor was it directly or indirectly involved in the loading up of AWB contracts to recover the debt (Pgs 24 & 25)

The events of 2004 flowed from the events of 2000 and compounded the error of 2000 (Pg 25).

**BHP Billiton s arrangements with Tigris**

Neither BHP Billiton nor BHP Petroleum holds, or has ever held, an interest in Tigris or any of its related companies (Pg 26).

Since the Cole Commission hearings began, BHP Petroleum has terminated the 2004 Agreement with Tigris, and Tigris has exited from a participation agreement with BHP Petroleum and other parties. BHP Petroleum is currently a party to two co-operation arrangements which include Tigris in relation to Iraq. BHP Billiton is reviewing both arrangements in light of the findings of Commissioner Cole. BHP Billiton will not conduct any new business with Mr Davidson Kelly, Tigris or any of its related companies, or any other company associated with Mr Davidson Kelly (Pgs 26 & 27).

**Reputational issues and areas for improvement**

Would BHP Billiton proceed in the same way today? BHP Billiton:

- recognises that the next generation of world class resources is likely to come from countries where the standards of business conduct may not be consistent with the standards in developed countries.
- must comply with applicable law and its own standards of conduct which include generally accepted business standards as set out in BHP Billiton s policies and procedures, including its Charter and Guide to Business Conduct.
- also regards programs designed to enhance its citizenship in communities in which it works as part of its licence to operate. (Pgs 11 & 12).

BHP Billiton s ability to operate effectively in countries that are more difficult and risky and to responsibly manage its community programs will be impaired if its reputation is damaged. While it is never possible to guarantee that a company of BHP Billiton s size and spread will not find itself before inquiries of this kind in the future, it needs to take all available steps to ensure each of its employees, agents and contractors knows and implements the standards of conduct in the Charter and the Guide to Business Conduct (Pg 12).

The Steering Group is satisfied that the policies, standards and guidelines governing business conduct have been significantly and effectively enhanced in practice since 1996. In particular, BHP Billiton has strongly enhanced its policy and procedures in relation to community development, gifts and donations since 1996. Notwithstanding this, areas for improvement have been identified (Pgs 13 & 14).

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The Steering Group recommends that:

in dealing with difficult and risky countries, BHP Billiton continues to progress its Country Risk project, which relates to processes and protocols for integrated country assessment, project evaluation, country entry and systems for capturing country risk data (Pg 14);

BHP Billiton clarifies key criteria for appropriate community payments, donations, sponsorships and business development expenditure (Pg 14);

the Global Ethics Panel review the mechanisms employed to ensure that agents and contractors are also aware of the required standards of conduct (Pg 14);

BHP Billiton review and assess the reach of its current policies and guidelines governing recruitment, including training (Pgs 16 & 17);

the Guide to Business Conduct be amended (where appropriate) to provide further guidance on dealing with conflict of interest situations and on selecting contracting parties and potential joint venture parties (Pg 22).

**29 November 2006**

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**Internal Review Report  
United Nations Oil-For-Food  
Programme**

This is the report of the Steering Group appointed by the Chief Executive Officer of BHP Billiton to conduct the Internal Review. The CEO adopts this Report in its entirety and has provided it to the Board of BHP Billiton.

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Glossary of defined terms and individuals

We have adopted the following definitions in this Report:

<b>Term</b>	<b>Definition</b>
<b>ASIC</b>	Australian Securities and Investments Commission
<b>AWB</b>	AWB Limited and its predecessors
<b>BHP</b>	The Broken Hill Proprietary Company Limited and from 1999, BHP Limited (the BHP entity prior to its merger with Billiton plc in 2001)
<b>BHP Billiton</b>	BHP Billiton Limited
<b>BHPP</b>	BHP Billiton Petroleum Pty Limited and its predecessors
<b>Board</b>	Board of Directors of BHP Billiton
<b>CEO</b>	Chief Executive Officer of BHP Billiton
<b>Cole Commission</b>	Royal Commission of Inquiry into certain Australian companies in relation to the UN Oil-for-Food Programme, established by Terms of Reference dated 10 November 2005
<b>Cole Report</b>	Report of the Cole Commission, dated 24 November 2006
<b>Customs Regulations</b>	<i>Customs (Prohibited Exports) Regulation 1958</i> (Cth)
<b>Deloitte</b>	Deloitte Touche Tohmatsu the firm of consultants engaged by BHP Billiton to support the work of the Steering Group
<b>DFAT</b>	The Australian Government Department of Foreign Affairs and Trade
<b>Freehills</b>	The firm of lawyers engaged by BHP Billiton to support the work of the Steering Group
<b>IGB</b>	Grain Board of Iraq / Iraqi Grain Board
<b>Internal Review</b>	The internal investigation undertaken by BHP Billiton in relation to the involvement of BHPP, and its associated companies and employees and officers (past and present), in the 1996 Wheat Shipment, 2000 Agreement and 2004 Agreement
<b>Maritimo</b>	Maritimo Investments Pty Limited
<b>Steering Group</b>	Appointed by the CEO to undertake the Internal Review. Comprises Ms Karen Wood (Group Company Secretary) and Mr John Fast (Chief Legal Counsel & Head of External Affairs)
<b>Tigris</b>	The Tigris Petroleum Corporation Limited
<b>Tigris Australia</b>	Tigris Petroleum Corporation Pty Limited

<b>UN</b>	The United Nations
<b>661 Committee</b>	Committee of all members of the UN Sanctions Committee, established under UN Resolution 661 to oversee its implementation
<b>1996 Wheat Shipment</b>	Shipment of wheat to Iraq in early 1996 funded by a payment from BHPP to AWB
<b>2000 Agreement</b>	Agreement between BHPP and Tigris, signed on 13 September 2000
<b>2004 Agreement</b>	Participation Agreement between BHPP and Tigris, signed on 25 November 2004

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We set out below a reference to the key individuals referred to in this Report, and the positions held by them at the relevant time:

<b>Individual</b>	<b>Positions held</b>	<b>Relevant time period</b>
<b>Philip Aiken</b>	BHP Executive General Manager, Corporate Development	May 1997 to August 1997
	BHPP Acting Executive General Manager and Chief Executive Officer	August 1997 to October 1997
	BHPP President and Chief Executive Officer	October 1997 to March 2004
	BHP Billiton Group President, Energy	March 2004 to April 2006
	BHP Billiton President, UK	April 2006 to present
<b>Sadaala Al-Fathi</b>	Iraqi Ministry of Oil Senior Advisor	August 1995 to October 2000
<b>Zuhair Daoud</b>	IGB Director General	1995 to 2000
<b>Norman Davidson Kelly</b>	BHPP Group General Manager, Business Development	February 1995 to 1997
	BHPP Group General Manager, New Business Opportunities	September 1997 to 2001
	BHPP Internal Consultant	November 1998 to March 2001
	BHPP International Energy Consultant	From September 2000
	Tigris President	From September 2000
	Tigris Australia Company Secretary and President	From September 2000
<b>John Feakes</b>	DFAT Desk Officer, Middle East and Africa Branch	1995 to 1996
<b>Tom Harley</b>	BHP Treasury, Special Project Manager	March 1989 to March 1994
	BHPP Group Manager, Financial Structuring	

		April 1994 to December 1995
	BHPP Group Manager, Business Development	December 1995 to April 1999
	BHP Billiton Vice President, Mergers & Acquisitions	May 1999 to January 2004
	BHP Billiton President, Corporate Development	January 2004 to present
<b>Jim Lyons</b>	BHPP Group Manager, Legal	1995 to 2001
	BHPP Regional Counsel, Australia and Asia	2001 to July 2004
	BHPP Special Counsel (part-time)	July to December 2004

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<b>Individual</b>	<b>Positions held</b>	<b>Relevant time period</b>
<b>John O Connor</b>	BHPP Executive General Manager and Chief Executive Officer	February 1995 to August 1997
<b>John Prescott</b>	BHP Managing Director and Chief Executive Officer	May 1991 to March 1998
<b>Charles Stott</b>	AWB Marketing Officer, International Sales and Marketing (Melbourne)	1985 to 1987
	AWB Head of Marketing, Europe and Middle East (London)	1987 to 1988
	AWB Regional Manager, Marketing, Middle East, Africa and Europe (Melbourne)	1988 to March 1996
	BHPP International Business Development Manager	March 1996 to 1998
	BHPP Project Development Manager, Pipelines	1998 to June 2000
	AWB General Manager, International Sales and Marketing	July 2000 to August 2001
	AWB General Manager, Mergers, Acquisitions, Strategy and Business Development	September 2001 to September 2003
	AWB General Manager, Landmark Rural Services	November 2003 to June 2006

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1 Announcement of Internal Review January 2006

On 19 January 2006, BHP Billiton issued a release announcing that it would undertake an internal review into the circumstances surrounding a shipment of wheat to Iraq in January 1996 and related events.

BHP Billiton made this announcement following comments made about the conduct of its wholly owned subsidiary, BHPP, during the opening of public hearings of the Cole Commission on 16 January 2006.

Those comments linked the 1996 Wheat Shipment with the alleged improper recovery, by Tigris, of an amount from the UN escrow account in late 2004.

BHP Billiton made further announcements in relation to the Internal Review in late January and February 2006, in which it undertook to conduct an extensive investigative process, supported by significant resources. Those announcements also promised the public release of the conclusions of the Internal Review, following the completion of the Cole Commission.

The Cole Report was released publicly on 27 November 2006. In it, Commissioner Cole made no findings as to possible breaches of the law by BHPP, BHP Billiton, or any of their current or former officers or employees. Commissioner Cole did make such findings in relation to Messrs Davidson Kelly and Stott, in their capacity as officers or employees of Tigris and AWB respectively.

2 BHP Billiton undertakes Internal Review

In February 2006, the CEO appointed a Steering Group to undertake the Internal Review. This appointment was noted by the Board.

The Steering Group was extensively supported in its work by Freehills, Deloitte, Tom Bathurst QC and BHP Billiton's Head of Internal Audit.

It has had access to:

Submissions of Counsel Assisting dated 3 October 2006, BHP Billiton's Reply Submissions dated 17 October 2006, and the Cole Report;

work undertaken by Freehills, which has been endorsed by Tom Bathurst QC, and, in relation to business compliance, by Deloitte and Internal Audit;

documents retrieved by BHP Billiton in response to three Notices to Produce issued by the Cole Commission to BHP Billiton between January and March 2006;

documents produced to the Cole Commission by other parties and entities, including AWB, the Australian Government, the UN and Tigris, that have been made publicly available; and

information from over 200 witnesses, including BHP Billiton witnesses (current and former employees) and Mr Stott, who was separately represented and attended the Cole Commission to be examined under oath principally in his capacity as an AWB employee.

The Steering Group has not had access to:

Messrs Davidson Kelly and O'Connor, who have refused to co-operate with the Internal Review. Mr Davidson Kelly also refused to co-operate with the Cole Commission;



documents held by Tigris, the Iraqi Government (and its various officials), and the UN, which were not made available to the Cole Commission; and

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certain documents made available to the Cole Commission, including some confidential exhibits.

This Report sets out the Steering Group's key findings as to whether:

BHP Billiton or BHPP has breached Australian law; and

any employee (or former employee) of BHP Billiton or BHPP has breached his or her duty to BHP Billiton or BHPP by breaching generally accepted business standards, including as set out in BHP Billiton's policies and procedures.

In considering whether there has been a breach of law, the Steering Group's work overlaps with the Cole Commission. In considering whether there has been a breach of duty, the Steering Group's work extends beyond the Cole Commission.

### **3 Key Factual Questions**

The following five key factual questions underlie the Internal Review:

1. Was the 1996 Wheat Shipment a gift or a debt transaction?
2. Was the 1996 Wheat Shipment subsequently reformulated from a gift to a debt transaction?
3. Did BHPP attempt to assign to Tigris a debt (connected with the 1996 Wheat Shipment), under the 2000 Agreement?
4. Was BHP Billiton or BHPP involved in, or aware of, the steps taken by Tigris to recover moneys from Iraq in late 2004, purportedly in connection with the 1996 Wheat Shipment?
5. Have BHP Billiton, BHPP, or any of their officers, ever held an interest in Tigris?

Immediately following the key factual findings, the Steering Group addresses whether or not the conduct involved breached Australian law or standards of business conduct.

Following those findings, the Steering Group has set out areas for improvement recognising, as it does, the importance of learning from this experience.

4. Was the 1996 Wheat Shipment a gift or a debt transaction?

### **4.1 The facts**

The key factual findings of the Steering Group relating to the 1996 Wheat Shipment are as follows:

in early 1995, following the introduction of UN Sanctions in 1990, BHPP developed an interest in the Halfayah oil field in Iraq. BHPP was advised by DFAT in February 1995 that Australian companies could lawfully *pursue future business opportunities in Iraq, so long as no trade occurs until sanctions are lifted* ;

Mr O'Connor recruited Mr Davidson Kelly on 28 February 1995, in part, to lead BHPP's business development activities in Iraq;

BHPP first made direct contact with Iraq in April 1995, by letter of introduction from Mr O'Connor to the Iraqi Minister of Oil. This letter was followed by a meeting between Mr Davidson Kelly and the Minister in early June 1995. At that meeting, the Minister linked, for the first time, the opportunity to participate in the development of the Halfayah oil field with the provision of wheat to Iraq;

between September and November 1995, BHPP considered a number of proposals for a shipment of wheat to Iraq. BHPP actively pursued two proposals: to provide the wheat to Iraq on a debt basis (a five year letter of credit with

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interest repayable in oil if UN Sanctions were lifted, or cash); and to pay for the shipment on a gift basis;

BHPP's objective, by either proposal, was to develop its reputation and standing in Iraq as against competitors in the future;

in late September 1995, Mr O'Connor sought Mr Prescott's approval for the credit proposal. Mr Prescott, after expressing some concerns with the proposal, made it clear in writing in late October 1995 that he would only agree to the proposed wheat shipment if BHPP proceeded via DFAT and obtained UN approval. He regarded their backing as a clear measure of appropriateness;

BHPP sought DFAT's approval for the letter of credit proposal in late October 1995. Mr Harley informed DFAT of BHPP's requirement for confidentiality, its commercial objective and its concern to avoid a breach of UN Sanctions. DFAT told Mr Harley that a credit transaction was not permitted under the UN Sanctions, but that a gift transaction would be consistent with UN Sanctions. DFAT also separately communicated this to AWB;

after the credit proposal was refused by DFAT, Mr O'Connor told Mr Harley that he was willing for the wheat shipment to proceed as a gift;

Mr Prescott understood that the rationale for the gift proposal was to seek *to establish a reputation or standing in Iraq that might get [BHPP] a seat at the table when [BHPP was] able to negotiate commercial business with Iraq* ;

at that time AWB was a government instrumentality. It had specific powers to handle and transport wheat. It was an offence at the time under Australian law to export wheat without the written consent of AWB. DFAT and the UN were aware of AWB's role as the exporter of the 1996 Wheat Shipment and that the IGB was the intended recipient of the shipment;

in November 1995, AWB (as the exporter of the wheat) obtained approval from the 661 Committee for the export of 100,000 MT of wheat to Iraq, on the basis of *cash payment to be received through third parties* . A copy of this approval was passed on by AWB to BHPP;

BHPP, although not the exporter, also sought approval directly from DFAT for the wheat shipment to proceed as a gift. Mr Harley informed Mr Feakes of DFAT of the commercial rationale for the gift. Mr Feakes informed Mr Harley in early December 1995 that DFAT had no objection to BHPP providing the gift to Iraq;

Mr Harley prepared the memorandum from Mr O'Connor to Mr Prescott dated 5 December 1995 seeking approval for the transaction on the basis that it was a gift;

on 9 December 1995, Mr Prescott gave written approval for the wheat shipment to proceed on a *straight forward grant basis* , which Mr Prescott understood to be a gift, not a loan. The approval was within his authority;

on 21 December 1995, DFAT provided AWB with a permission to export the wheat (20,833 tonnes) in accordance with the Customs Regulations, which required any person planning to export goods from Australia to Iraq to obtain written permission from DFAT;

on 30 January 1996, AWB invoiced BHPP in the amount of US\$4,999,920 for the shipment of wheat, which BHPP paid on 5 February 1996. The payment was recorded in the accounts of BHPP as a business

development expense (non-deductible donation);

no tax deduction was ever claimed for the payment made by BHPP to AWB for the 1996 Wheat Shipment;

no debt was ever recorded in the accounts of BHPP in respect of the payment made by BHPP to AWB;

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in March 1996, the Board of BHP discussed the 1996 Wheat Shipment and the fact that it was made as a donation; and

in June 1996, the Audit Committee of BHP discussed the 1996 Wheat Shipment and the fact that it was made as a donation.

The 1996 Wheat Shipment was, as set out above, variously referred to in contemporaneous documents as a gift, donation and business development expense.

As at January 1996, there was nothing to suggest that the 1996 Wheat Shipment was to proceed as a debt. Apart from the initial credit proposal, which was abandoned, there was no suggestion at the time that Messrs Davidson Kelly or Harley, or any other person, had been involved in the negotiation, or execution, of an agreement that provided for the 1996 Wheat Shipment to proceed as a debt. Mr Davidson Kelly told the Iraqis in January 1996 that the 1996 Wheat Shipment was a gift to the people of Iraq.

In conclusion, the 1996 Wheat Shipment was made as a gift.

### **4.2 Did BHPP breach Australian law in making the 1996 Wheat Shipment?**

The Steering Group's key findings in relation to whether BHPP breached Australian law in making the 1996 Wheat Shipment are as follows:

there was no breach of the Customs Regulations because AWB obtained DFAT's permission for the exportation of the wheat to Iraq, as had to occur, under the Customs Regulations. BHPP independently sought DFAT's permission;

BHPP did not breach the *Crimes Act 1914* (Cth) because it did not mislead a government authority (DFAT or AWB) about the terms of the 1996 Wheat Shipment. It told both DFAT and AWB that the 1996 Wheat Shipment was to be a gift and it explained its commercial rationale; and

BHPP did not bribe a foreign official: DFAT was fully aware of the gift, and its commercial purpose; the gift was made to the Iraqi Government, not to a public official; and, in providing the gift to the Iraqis, BHPP hoped to forge a relationship with the Iraqi Government, not to cause it to act dishonestly.

BHPP also acted consistently with UN Sanctions because the 1996 Wheat Shipment was notified to the 661 Committee as a gift and approved by the 661 Committee, as required under Resolution 661.

### **4.3 Findings of Commissioner Cole**

#### **(a) Key factual findings**

Commissioner Cole's key factual findings relating to the 1996 Wheat Shipment are as follows:

*as at December 1995: BHP[P], through Mr Prescott, had intended to enter into the transaction on the basis that it was a gift, and approved the transaction only on that basis*;

*AWB had both DFAT and UN approval on the basis of cash payment to be received through third part[ies]. That implied a gift by the third party, especially as proposed credit or deferred payment arrangements had been earlier expressly rejected by DFAT*; and

*the [1996 Wheat] [S]hipment was approved by BHPP, DFAT and the [UN] as a gift or grant and was delivered as such*.

These findings are consistent with the Steering Group's findings as set out at part 4.1 above.



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**(b) Key legal finding**

Commissioner Cole found that BHPP did not mislead either the United Nations or DFAT in respect of the transaction.

This finding is consistent with the Steering Group's findings as set out at part 4.2 above.

**4.4 Did any officer of BHPP breach standards of business conduct in making the 1996 Wheat Shipment?**

The primary issue in this period is whether the 1996 Wheat Shipment, as formulated and executed, was flawed and therefore constituted a breach of business conduct standards by the relevant officers involved. Before setting out the Steering Group's key findings on this question, it is necessary to make some preliminary comments.

**(a) Background**

In 1995, a major part of BHPP's strategy, as introduced by Mr O'Connor, was to seek opportunities to offset high risk exploration with proven undeveloped fields in politically difficult and risky locations. Under Mr O'Connor's direction, BHPP pursued opportunities in Algeria, Pakistan, Syria and Iraq. BHPP took the view at the time that it was necessary to pursue strategic opportunities wherever they may be located, subject to compliance with the law and the application of generally accepted business standards (including as set out in BHP Billiton's policies and procedures). That remains BHP Billiton's position today.

Clearly, there were, and are, greater risks and pressures involved in pursuing and executing opportunities in difficult and risky locations such as Iraq. BHPP took a number of steps to mitigate the risks and pressures it faced in its early contact with Iraq.

First, BHPP approached DFAT in February 1995 about dealing with Iraq. DFAT advised BHPP that it could pursue business opportunities in Iraq, provided it did not trade prior to the lifting of UN Sanctions.

Second, BHPP prepared, and commissioned, various risk assessment reports in relation to Iraq in 1994 and 1995. These reports considered the general commercial and political risks of engaging in business with Iraq.

Third, Mr O'Connor involved Mr Prescott (as Managing Director and Chief Executive Officer of BHP) in the decision making process. Mr Prescott initially had significant reservations about the proposed shipment. He consulted with, among others, the Corporate General Manager of External Affairs and the Director of Public Policy of BHP. He received detailed papers on the proposal. Mr Prescott understood clearly the rationale for the proposed shipment, and said in oral evidence before the Cole Commission that BHPP was *seeking to establish a reputation or standing in Iraq that might get [BHPP] a seat at the table when [BHPP was] able to negotiate commercial business with Iraq*. Eventually, Mr Prescott decided to agree to the proposal if BHPP proceeded transparently via DFAT and obtained UN approval. He believed their approval would be a clear measure of the broader appropriateness of the proposal.

Fourth, AWB (as the exporter of the shipment) obtained the written approval of DFAT and the UN for the wheat shipment on the basis that it would proceed as a gift transaction, consistent with Mr Prescott's conditions. BHPP, in addition, obtained separate approval from DFAT. BHPP made DFAT aware of the commercial rationale of the gift, as understood by Mr Prescott.

Fifth, BHPP considered at the time making a public release regarding its role in the 1996 Wheat Shipment. For business judgment reasons, a decision was made not to make a public disclosure.

**(b) Key findings**

The Steering Group's key findings in relation to the primary issue are as follows:

- (1) No specific guidance

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The 1996 Wheat Shipment was an unusual transaction, as Mr Prescott (and others involved) recognised at the time. Accordingly, there was no specific policy or procedure in place at the time of any relevance. Neither the gift policy, nor the improper payments policy (both set out in a one page principles document known as the 1992 Business Conduct Guide), provided for these circumstances.

A feature of the unusual nature of the 1996 Wheat Shipment was its magnitude. The absence of policy or procedural guidance, and its size, meant that the issue needed to be (as it was) elevated to senior management. Mr Prescott, as the Managing Director and Chief Executive Officer of BHP, made the policy decision to proceed (on a conditional basis), in possession of all relevant information and after careful consideration. His decision was that DFAT and the UN should be the ultimate arbiters.

The Steering Group is of the view that Mr Prescott made a prudent and sensible decision on how to proceed.

(2) General policy guidance

The 1992 Business Conduct Guide required the affairs of BHPP to be conducted at all times in accordance with the law and high ethical standards. It did not further define high ethical standards. The 1995 Executives Handbook required satisfactory relations with government.

The Steering Group considers that transparency, accountability and honesty are, and were at the time, key indicia of ethical behaviour relevant to the 1996 Wheat Shipment. In relation to the 1996 Wheat Shipment, it finds that as to:

transparency the 1996 Wheat Shipment, including its rationale, was fully and accurately disclosed internally to the Chief Executive Officer of BHPP and the Managing Director and Chief Executive Officer of BHP. It was accurately recorded in BHPP's accounts as a donation and BHP's Board, and Audit Committee, were told that the 1996 Wheat Shipment was a donation. It was also fully and accurately disclosed externally to DFAT and, through DFAT, to the 661 Committee. Consideration was given at the time as to whether or not the 1996 Wheat Shipment should be disclosed publicly. For business judgment reasons, it was not;

accountability the 1996 Wheat Shipment was approved by those senior people and key bodies who had the relevant authority to approve it (see above);

honesty the 1996 Wheat Shipment was intended to be made as a gift, and was in fact made as a gift, consistent with representations made to AWB, DFAT and the 661 Committee.

By proceeding as he did, Mr Prescott was clearly conscious of the ethical risks of the proposed transaction to the reputation of BHP and BHPP. His requirement for DFAT and UN approval was designed to address those risks.

Accordingly, the 1996 Wheat Shipment was consistent with business conduct standards at the time it was made.

As to the delivery of the 1996 Wheat Shipment, BHPP used AWB, a government instrumentality, and an exporter well known to DFAT and the UN. It did not separately take steps to prove that delivery was, in fact, made to the intended recipient, the IGB, although delivery was subsequently confirmed by the Iraqi Government.

As to satisfactory relations with government, the Steering Group and the Commissioner found that BHPP expressly sought DFAT's approval for the 1996 Wheat Shipment and that BHPP did not mislead DFAT in relation to the terms of the 1996 Wheat Shipment. When seeking approval for the 1996 Wheat Shipment, BHPP (through Mr Harley) disclosed its commercial objectives to DFAT. The Steering Group considers that BHPP acted appropriately in its dealings with DFAT in 1995 and that its conduct was consistent with then applicable policy.

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### **(3) Bribery**

In general terms, a bribe is a payment of an undue reward to a person in a public office, made to influence that person's behaviour in that office and to induce that person to act contrary to accepted rules of honesty and integrity. The Steering Group has concluded that the 1996 Wheat Shipment was not a bribe because:

DFAT was fully aware of, and approved, the 1996 Wheat Shipment as a gift. BHPP informed DFAT of its commercial objective in providing the 1996 Wheat Shipment;

the gift was made to the Iraqi Government, not to a public official. BHPP's payment for the 1996 Wheat Shipment was made directly to AWB; and

in providing the gift to the Iraqi Government, BHPP hoped to forge a relationship with that government, not to cause it to act dishonestly.

### **(4) Other companies' practice**

An examination of corporate practices in the mid 1990s in relation to the provision of benefits to foreign governments, or foreign entities, indicates that various companies offered benefits to Iraq and other developing countries with the hope of obtaining future business concessions.

While this is not of itself evidence of appropriate practice, and while each transaction needs to be understood in its context, other major corporations were involved in conduct broadly analogous to the 1996 Wheat Shipment.

### **(5) Overall finding**

It follows from these key findings that the Steering Group is of the view that no individual acted in breach of his or her duties to BHPP in connection with the making of the 1996 Wheat Shipment by breaching a particular policy, or by breaching standards of business conduct.

## **4.5 Broader observations and areas for improvement in light of the 1996 Wheat Shipment**

### **(a) Broader observations**

Notwithstanding the overall finding, the Steering Group has further considered whether BHPP would proceed in the same way today were the same proposal to come forward. The Steering Group makes the following observations:

(1) The next generation of world class resources is likely to come from countries where the standards of business conduct may not be consistent with standards in developed countries. To deliver on BHP Billiton's corporate objective of creating long term value for shareholders, BHP Billiton has a commercial obligation to continue to conduct business in countries that might be regarded as more difficult and risky. This includes countries like Iraq.

(2) In conducting its business throughout the world, BHP Billiton has committed to do so, subject to compliance with:

applicable law (including the local law); and

the application of BHP Billiton's own standards of conduct, which include generally accepted business standards, as set out in BHP Billiton's policies and procedures, including its Charter and Guide to Business Conduct.

BHP Billiton sees this as a fundamental plank of its licence (or right) to operate and does not adjust down its standards when it operates in countries where a lower standard might be acceptable.