

AWB Ltd and the Oil for Food Programme

Background

It is appropriate to remind ourselves of the history that gave rise to the Oil for Food Programme.

The UN instituted sanctions against Iraq following its invasion of Kuwait in August 1990. Much pressure was placed on Iraq over this invasion until finally the US led an invasion of Kuwait of its own and drove the Iraqis out in early (January-February) 1991.

In March 1991 the UN imposed sanction 687. Save for humanitarian (food and medical) supplies Iraq was prohibited from trading. It could not purchase any materials for maintenance let alone construction of infrastructure. It came to the point where all of its gold and cash reserves were depleted and Iraq could not even purchase the meagre humanitarian supplies it was permitted.

It has been observed that the stated purpose of the sanctions was to prevent Saddam Hussein from developing WMDs and to break it militarily.

The sanctions bit hard to the point that it was reported in the Western press that children in Iraq were dying in large numbers. Now doubt the Iraq regime turned this aspect of the oppression caused by the sanctions to its advantage. There was pressure to relieve the situation which eventually led to the introduction of UN Security Council Resolution 986 which began the Oil for Food Programme. This effectively began in late 1996 early 1997.

This programme permitted Iraq to trade its prime and only significant export, oil, and to use the funds generated to purchase food, medical supplies and other humanitarian necessities. Trading restrictions were relaxed but not withdrawn. Proceeds of the oil sales were held by the UN in escrow. The UN would pay Iraq's trading partners from the account upon proof of delivery of goods to Iraq pursuant to UN approved contracts, which were meant to have been thoroughly vetted by the UN. Trade sanctions remained in an effort to prevent the Iraqi regime from rearming. It was not permitted to pay any funds to Iraq other than through the escrow account. In particular it was not permitted to pay US dollars into any Iraqi bank accounts or into accounts for transmission to Iraq.

The Oil for Food programme proved to be a failure. Iraq found methods to circumvent it. One method was to sell its oil on the international black market in return for cash or kind another involved the subterfuge of inflating or loading up the price of commodities it purchased and arranging for the vendors to transmit that part of the inflated contract price over and above the true contract price, which they received from the UN controlled escrow account, to accounts in Jordan which were used to funnel money back to Iraqi government controlled organisations or government corporations and therefore back into consolidated revenue in Iraq.

AWB was Iraq's largest trading partner. In 1999 it won contracts with Iraq under the Oil for Food Programme. It agreed to inflate the price of wheat and to pay the excess to Iraq via conduits. That excess was called a trucking fee. AWB deceived the UN in part by not providing the complete set of contractual documents to the UN for approval. The documents provided to the UN did not disclose the trucking fee nor the fact that AWB had agreed to pay a flat fee per tonne to the Iraqis. The contracts misdescribed AWB's responsibilities as a supplier of wheat. The contracts were approved and the rorting began.

The rorting came to notice after the invasion of Iraq by the "coalition of the willing" and "operation Iraqi Freedom" which began in March 2003 and quickly led to the overthrow of the Saddam Hussein regime. The UN conducted its own Inquiry, known as the Volker Inquiry, which exposed AWB as the being by far the largest rorter of the OFF Programme.

Australia's response was to establish the Cole Inquiry. I was appointed Senior Counsel Assisting the Inquiry.

In November 2006 Terry Cole AO RFD QC delivered his report.

The principle focus of the Inquiry was AWB Ltd and its wholly owned subsidiary AWB (International) Ltd. and the trade in wheat with Iraq which had occurred between late 1999 and March 2003.

Commissioner Cole found that:

1. In that period AWB had paid in excess of US\$224 million to a transport company named Alia in Amman Jordan by way of "trucking or transportation fees" in respect of 20 contracts for the sale and shipment of wheat to Umm Qasr in Iraq.
2. Alia in turn after deducting a commission of .25% paid the money Iraqi companies or government entities. The funds were thereafter distributed to various Iraqi government ministries with approximately 2/3 going to the Department of Finance, 18% for land transportation, 4% to ports and 1% to "water".
3. In fact Alia had never entered any contract or agreement to transport wheat in Iraq with AWB and had never carried any Australian wheat away from Umm Qasr. AWB's responsibility for delivery of the wheat in truth stopped at the ships rail. AWB had never provided any after sales service (whatever that may be in relation to bulk wheat). The wheat was collected at port and delivered within Iraq by Iraqi trucks controlled by an Iraqi company.
4. The payments to Alia were part of a subterfuge agreed to by AWB to assist Iraq to obtain funds from the UN without the UN's knowledge or consent and in breach of UN sanctions to which Australia had agreed.
5. The subterfuge and deceit by AWB extended to misleading the Commonwealth of Australia as to the true nature of its contractual relations with Iraq.
6. The plan was simple enough. AWB agreed to inflate the price of wheat in its contracts with Iraq initially by US\$12 a tonne increasing over time to US\$25 a tonne and to pretend that the fee was referable to transportation costs within Iraq for which AWB was responsible. AWB then presented documents to DFAT for transmission to the UN for approval by it. Upon proof of delivery AWB then claimed

the full sum due to it under the contract from the UN. It treated those funds less the "transportation costs" as being properly due to it as the cost of the wheat and costs associated with shipping the wheat to Umm Qasr. The balance of \$12-\$25 was then paid to Iraq.

7. Initially the payments were made secretly through shipping companies. For their assistance the shipping companies were paid a commission by AWB. From July 2000 AWB made the payments through Alia.
8. From November 2000 AWB inflated the wheat price agreed with the IGB to include a 10% after sales service fee calculated on the value of each shipment plus the transportation cost or "trucking fee" as it became known, which by then had increased to US\$25 a tonne. The transportation fee which reflected these two imposts amounted to US\$44.50 per tonne for the contract negotiated in November 2000. In the past AWB had been required by the IGB to pay the transportation fee in advance of ships docking in Umm Qasr however as the impost had increased from US \$14 per tonne to \$44.50 between July and November 2000 it negotiated with the Iraq's continue to pay the sum of \$14 per tonne in advance with the balance to be paid after the contract had been honoured by the UN and the funds paid to AWB from the escrow account to AWB.
9. The Commissioner was satisfied that senior officers of AWB were involved in, or knew about and authorised the negotiation, drafting and submission of contracts to DFAT and the concealment of information relating to the arrangements. They included the General Manager-Middle East (Mr Hogan), the General Manager, Sales and Marketing (Mr Stott) and the CEO Mr Flugge and others.

The Volker Inquiry had identified the mechanism of inland transport fees paid through Alia as the principle method used to effect the fraud upon the UN. The Cole Inquiry identified other methods used by AWB. These included the mechanism of the "after sales service fee" and the resolution of what became known as the Tigris Debt.

The Tigris Debt related to a claim that Iraq owed a debt to BHP Petroleum in respect of a shipment of wheat which it had organised as a "humanitarian donation" to Iraq in 1996. BHP assigned to Tigris any rights it had to payment for the wheat which was originally valued at US\$5 million in return for 25% of whatever was recovered from Iraq.

AWB assisted Tigris to obtain Iraq's agreement to pay for the wheat in 2001 and 2002. Further AWB assisted Tigris to recover the so called debt which at simple interest was calculated to be US\$8.3 million. The agreement reached between AWB and Iraq was for the contract price of wheat to be inflated to cover the repayment of the debt. AWB was to receive a US\$500,000 commission.

Concern was expressed within AWB about how this plan might be put into effect. It was thought that it would be obvious if the repayment was concealed within only one contract and that it might be best to spread the loading up over two or more contracts. The proposal to load up wheat contracts was found by the Commissioner to have been reported widely to senior executives in AWB and AWB (International).

At about the same time AWB sought to settle a commercial dispute with IGB over claims that had been made by IGB that a previous shipment had been contaminated by iron filings. The dispute was settled by agreement which required AWB to pay Iraq approximately US\$2 million. The question arose as to how this payment might be achieved.

Advice was sought from DFAT. It advised two acceptable methods of settling this arrangement. One was to give the Iraqi's a discount on future shipments of wheat. Another was to pay the money into the escrow account controlled by the UN.. Notwithstanding this advice and within 2 days of its receipt AWB wrote to IGB and asked whether the Iraqi Minister had considered whether the payment to Iraq could be made by offsetting it against the Tigris debt. Iraq refused this. Clearly it wanted the cash from the UN controlled escrow account (which was to fund the Tigris debt in any event).

Needless to say that the proposition that the iron filings settlement be effected by setting it off against the Tigris debt was never floated by AWB with DFAT or the UN. Clearly the executives at AWB did not wish DFAT know of the Tigris arrangement.

A memorandum was circulated amongst senior executives of AWB which contained legal opinion provided by AWB's in house lawyers as to how the payment in settlement of the iron filings claim might to be made.

The Commissioner said of that "legal opinion" that:

"...it was nothing of the sort. It was an attempt to devise a method whereby the payments to Iraq would not be obvious by spreading them thinly over future shipments..to hide the fact of payment to Iraq by making the payment to an intermediary rather than IGB direct and in another country and to falsify the nature of the transaction.....This advice was contrary to the clear specific advice given to AWB by DFAT after consultation with the United Nations....

The memorandum recognised corporate governance issues associated with making a direct payment to a company with links to the Iraqi regime. The only company to whom a payment was to be made was Alia. Obviously AWB – at a very senior management level – knew Alia was linked to the Iraqi regime by at least December 2002. AWB also knew that the Australian Government, were it aware of the contemplated payments, would be obliged to stop such payments. It also knew that that DFAT had, on UN advice, indicated that any iron filings compensation should be paid to the escrow account or deducted from the price in future sales. Nonetheless, AWB decided both to load-up two contracts to recover \$8.375million for Tigris (and thus earn a fee of US\$500,000) and to pay the iron filings compensation 'as per method outlined in AWB's legal opinion (and requested by the Minister of Trade) directly to Alia Transport in Jordan in instalments'. AWB was also to look to 'obtain written agreement from IGB to the payment in the format agreed by legal however it is not guaranteed'.

The course of action referred to was recommended by the General Manager International Sales and Marketing and the Group General Manager Trading. AWB (International), the grains pool, being aware of all the corporate governance and legal

issues, agreed with the recommendation 'in light of the commercial imperative of this situation'. That imperative was to retain the Iraqi grain trade, which it feared would be lost if the compensation claim was not paid."

The Cover Up

When asked to respond to a complaint made by Canada to the UN in 2000 that Iraq had attempted to solicit kickbacks from it on the stated basis that AWB had paid them AWB denied any such thing. This denial was false.

Concerns raised by a US wheat lobby "US Wheat Associates" in correspondence with Colin Powell in 2003 after the invasion of Iraq were strenuously denied by AWB which went so far as to recruit the Australian Government in its support.

AWB provided incomplete information to the Wheat Export Authority when it attempted to audit its dealings with Iraq.

AWB provided incomplete information to Queens Counsel when it sought an opinion as to the validity of its dealings with Alia, by failing to disclose that indeed Alia had performed only one service for it and that was the funnelling of money to Iraq. When guarded advice came from that silk the effect of the advice was misdescribed.

Similarly incomplete information was provided to Sir Anthony Mason when an Opinion was sought from him concerning the legality of the payments to the transport company Alia. He was never told by AWB that Alia had never been used by AWB to provide transport within Iraq.

AWB misled Minister Downer when giving assurances that it had acted with integrity.

Significantly AWB failed to act upon red flags raised by Arthur Andersen in late 2000 after it provided a written report which AWB had commissioned.

Commissioner Cole found that the Arthur Andersen Report made clear:

- *The culture of AWB, and its employees, required review and attention, so far as ethical dealing was concerned.*
- *Payment of inland trucking fees in Iraq was a concern. The concern arose because*
 - *There had been a UN inquiry about AWB's payment of trucking fees.*
 - *AWB had sought to hide or disguise the payment of the trucking fees.*
 - *There had been AWB management pressure to maintain sales to Iraq, and avoidance of UN scrutiny or trucking fees was necessary if such sales were to be maintained.*
 - *Entities requested by AWB to make payments of trucking fees on its behalf had declined because of fears such payments may have been in breach of UN sanctions re may have constituted money laundering.*

- *Increases in trucking fees appeared excessive, with the risk that some portion of the fees may be diverted to purposes other than trucking.*

Following the Arthur Andersen report there was no inquiry into the culture at AWB, why AWB had thought it necessary to disguise payments of trucking fees, the circumstances relating to the payment of trucking fees to a Jordanian company, the reason for the significant increase in trucking fees, or why AWB had agreed to pay such increased fees or trucking arrangements generally.

The Commissioner also felt compelled to report adversely upon the response of AWB to his Inquiry in particular he noted that the AWB response is also indicative of the culture within AWB from board level down.

Commissioner Cole said:

AWB presented a facade of cooperation with the Inquiry. In truth it did not cooperate at all.

As early as 25 January 2006 the Commissioner raised with Senior Counsel for AWB the question of its co-operation. In particular he noted that the statements that had been provided by AWB from its executives told the inquiry "nothing".

The Commissioner pointed out what he said were at least 2 consequences of that approach. The first related to the laborious process that the Inquiry was therefore obliged to undertake in order for him to understand fully the factual issues and the second was "the process is doing AWB immeasurable harm from a reputational point of view and a measureable harm from an economic point of view".

The Commissioner dealt in detail with the lack of co-operation afforded by AWB. I will not take time reviewing those remarks here they are reproduced at pages 235-243 of Volume 1 of the Report of the Inquiry.

The fact remains that although the letters patent issued on 10 November 2005 and a 4 page list of issues as identified by counsel assisting had been forwarded to AWB on 9 December 2005, the Tigris was not brought to the Inquiry's attention until 12 December 2005; no documents relating to the iron filings claim had been provided and the Arthur Andersen Report had not been disclosed. The 15 statements provided by prospective witnesses, all of them current employees of AWB had not addressed the issues identified in the letter of 9 December 2005. It was claimed that this was because there had been insufficient time to prepare detailed statements. Other explanations were offered which pointed to the restricted availability of documents. The Commissioner accepted some of these excuses up to a point. However at that time he was not aware and did not become aware for many months that 'in fact AWB had collected most of the relevant documents..in May 2004..(in order to brief counsel)'. Nor did he know that 'in May 2004 AWB's lawyers had taken statements from many material witnesses on topics of relevance. Had there been cooperation, statements addressing the documentary material tendered on the first day of hearings could have been provided. The issues were well

understood because Senior Counsel had been asked to advise on the very terms of reference into which I was to inquire as early as May 2004. The reasons advanced by Mr Judd QC for the absence of cooperation were not factually accurate.

At no time did AWB make a statement of its position before this Inquiry, otherwise than in relation to its claim for legal professional privilege. That meant that all factual and legal issues had to be addressed by evidence. AWB had the right to adopt that position. However, it is not consistent with cooperation when it is now apparent that AWB had collated much of the relevant material more than 18 months before the Inquiry began, yet chose not to produce it to the Inquiry until compelled to do so, and then not in its assemble form.

With regard to AWB's claims for legal professional privilege, the AWB Chairman and Board, so I was told, decided to claim legal professional privilege for its internal investigation of AWB's trading with Iraq during the Oil-for-Food Programme.

In their written submissions AWB and its directors sought to explain their decision to maintain legal professional privilege. They acknowledged that by the commencement of the Inquiry AWB's lawyers had conducted the lengthy 'legal review' known as Project Rose, had conducted interviews with 16 AWB executives and taken statements from seven, had conducted the investigation known as Project Water into the Tigris matter, and had obtained legal advice from solicitors, from junior and senior counsel, and that the Board had been briefed on these matters on several occasions. They submitted that because of the 'interests of the company as a whole', as distinct from the directors' 'own self interest', they resolved to claim privilege over that material. The 'interests of the company as a whole' were said to include:

...protecting the company's interests in the event of civil or criminal proceedings, protecting the legitimate interests of employees in the event of civil or criminal proceedings, and maintaining an environment where employees will not be dissuaded from seeking internal or external legal advice in relation to the company's business because of concern that the Board would act in its own self interest deciding whether or not to maintain any privilege attaching to such communications.

Further, they submitted that once there was pressure from both the Inquiry and the media and public to waive the privilege, it became not possible to waive privilege because it would 'attach criticism as one made for self interest and in breach of duty'.

I am not able to accept these extraordinary submissions. They are built on the premise that the Board of AWB considered the results of two and a half years of investigations, recognised that that disclosure of the facts, material and advice obtained during that process would be deleterious to AWB and its employees, and then resolved that it was in the 'best interests of the company as a whole' to try and keep secret that damaging material – even from a lawfully constituted Inquiry established by the Commonwealth of Australia to inquire into the very matter investigated. Reduced to simple terms, the directors decided to try and prevent disclosure of damaging documents. Of course, if the material was not damaging there could be no reason to try to prevent its disclosure.

Furthermore, at the same time AWB and its directors stated repeatedly that they were cooperating with the Inquiry, knowing they were not, and maintained the public position of absence of any wrongdoing.

Unashamedly, AWB and its directors then submitted that, because they chose to seek to keep hidden the damaging documents, and because I would not accept their claims for privilege without their putting on evidence and my hearing argument, AWB was then obliged to resort to the Federal Court to have privilege decided. There, so it was argued, the matter was more expeditiously resolved than before me. Thus, the submissions concluded, it could 'not be reasonably contended the refusal by AWB to waive privilege caused any significant delay'.

I do not doubt that the decision to seek to keep secret the damaging material was taken by AWB and its directors because of the awkwardness of AWB's position. If support for that view is needed it is found in the judgement of Justice Young in the Federal Court, who, having looked at certain documents for which privilege was claimed, wrote:

I am satisfied that these 10 documents are not privileged. The documents were, prima facie, brought into existence in furtherance of an improper and dishonest purpose, viz, inflating the prices of contracts A1670 and A1680 so as to extract payments out of the United Nations' escrow account that would then be utilised, in part, to satisfy a compensation claim by GBI (the Iraqi Grain Board). Prima facie, the evidence establishes the transaction was deliberately and dishonestly structured by AWB so as to misrepresent the true nature and purpose of the trucking fees and to work a trickery on the United Nations.

AWB's submission in relation to legal professional privilege has no substance whatsoever. It ignores the facts of what happened.

AWB maintained in its public statements three basic propositions:

- AWB believed that payments to Alia were for the provision by Alia of trucking services in Iraq.*
- AWB did not know that payments to Alia were payments to Iraq or Iraqi entities.*
- AWB's legal advice was that in making payments to Alia it had not acted contrary to UN sanctions and, further, that it had not breached any Australian law.*

Disclosure of AWB's internal review of factual circumstances, including the documents reviewed and statements taken from witnesses, would at the very least cast serious doubt on the first two propositions. Disclosure of the legal advice received would make public the advice received contrary to the third proposition and make apparent the many reservations and qualifications AWB's legal advisors had raised, and disclose the narrow basis upon which the advice was given – in the case of Mr Tracey QC because, 'on the assumptions on which I have been asked to advise, the payments were made pursuant to bona fide commercial arrangements' and in the case of Mr Richter QC, regarding Tigris, because although 'we consider it possible that AWB employees who structured the Tigris transaction might be found to have engaged in misleading conduct for certain

purposes, that is not sufficient to establish the offence because of the absence of a causal link'.

Thus AWB, its Chairman, Deputy Chairman and its Board decided to try to maintain the logically absurd public position that AWB had not breached any sanctions or laws and had strong legal advice to establish that position but would not disclose that advice or the factual basis established by AWB on which it was based. The strategy was, from the outset, bound to fail once its claim for privilege was challenged because of the doctrine of waiver, as the Federal Court found.

AWB's response to this Inquiry was one of non-cooperation, lack of frankness, and resort to litigation to endeavour to keep from disclosure documents and material relevant to this Inquiry. The decision to adopt that approach was made by the Chairman and Board of AWB. It has caused inestimable reputational harm to AWB.

Although AWB's approach to the investigations and inquiries with which it was confronted might be indicative of a closed corporate culture and was plainly contrary to the spirit, if not the letter, of its own Code of Conduct, such approach and conduct did not constitute a breach of any Commonwealth, State or Territory law. Rather, it was reflective of an attitude, established at the highest level in the company, that bodies with a legitimate interest in whether AWB's activities accorded with proper standards of commercial conduct should be resisted in their endeavours to inquire into that issue. Whilst AWB was entitled to take such steps as it regarded appropriate to protect its legitimate commercial interest, in determining what were proper steps to be taken in that regard AWB appears to have overlooked the reputational consequences of its approach."

How did it come to pass that AWB could fall so far?

When I cross examined the Prime Minister, John Howard on 13 April 2006, there was the following exchange:

JA: ..did you ever have any suspicion that any Australian company including AWB, one of the largest exporters to Iraq, might have been involved in that rorting?

PM: No I didn't

JA: Are you able to say why it was that you never had any such suspicion?

PM: Well because I had never been presented with any hard evidence. I was I guess conscious only of AWB because of the predominant role of AWB in the wheat trade, and I had always believed the best of that company, as had most people in the government. It had been associated with Australian wheat industry since the 1930s and it hadn't crossed my mind that it would have behaved corruptly.

I believe that there are a number of reasons for the ship wreck that resulted from AWB's activities. And here I include the lack of co-operation and the obstinacy that prevented AWB from coming clean about the true nature of its dealings with Iraq.

1. It failed to recognise the true value of its reputation, its most valuable asset;
2. It failed to recognise its second most valuable asset...control of the single desk;
3. It failed to deal with the tension between a drive to maximise the return to growers and the need to act honourably and in the best interests of its shareholders. There is no defensible rationale for bribery, corruption or the payment of kickbacks, even where the money being kicked back belongs to the customer;
4. These failings persisted and infected its response to the Volker Inquiry and its response to the Cole Inquiry;

Some commentators have said:

- the payment of kickbacks was necessary in order to do business in the Middle East. Some would substitute or include other regions.
- Unless AWB had accepted the demands of the IGB it would not have sold the millions of tonnes of wheat on behalf of Australian growers. In support of this argument I have heard it said that as a result of UN sanctions Iraq the people of Iraq had suffered enough. After years of sanctions Iraq had no gold reserves and no cash; it had little in the way of infrastructure. Therefore, no harm was done as all that happened was that Iraqi money earned by the sale of Iraqi oil was passed back to Iraqis to be available to improve living conditions for ordinary Iraqis.

These attempted justifications are neither accurate nor acceptable.

First it is simply not true to say that the payment of bribes or kickbacks is a necessary feature of doing business in the Middle East or in Iraq. In over 50 years of trading the Australian Wheat Board had never paid kickbacks or bribes as best as we could determine;

Second if there truly was a belief that had AWB not agreed to the subterfuge Iraq would have not purchased Australian wheat, the way to deal with that was not to succumb to the threat but rather to expose it first to the Australian Government and then to the United Nations. Fully exposed the threat would have lost much of its force. If the threat had been based upon a real need to access funds for important infrastructure then exposing the threat would have been to expose the need. Australia might have then worked with Iraq to achieve humanitarian improvements to the Oil for Food Programme and worked with the UN to ensure that competitors of AWB did not gain from AWB's exposure of the scam to AWB's detriment.

Exposure of the threat would surely have exposed flaws in the Oil for Food Programme.

Further Australian wheat was highly regarded in Iraq. It was particularly suitable for use in Iraq because of the culture and practice in Iraq of local milling at village and cottage levels. Iraq had been an Australian market for 50 years or more and during

that time Iraqis had come to rate it the best wheat in the world. Our wheat was not a product that would easily have been replaced.

These avenues of combating the demands of the Iraqis were not discussed within AWB. The imperative was short term; to maximise returns for the grower. I suspect that there was also the imperative of sharing the spoils of the trade. The answer to the demands of the Iraqis was to find ways of hiding the payments. Here were email jokes about paying the money in cash or using a suitcase to make the payments.

When AWB's response to the Iraqi proposals was exposed first by Volker and then in more detail AWB lost an opportunity to salvage something of its reputation by acknowledging its behaviour, evidencing its motives and expressing contrition. Instead as reflected in the findings of the Commissioner that we have just revisited the response was to deny and obfuscate and to ignore the risks of such an approach.

AWB had sort out Dr Peter Sandman who devised a strategy in an effort to salvage its reputation. His advice in substance was to apologise and explain. To over apologise...if that were possible. AWB had that advice before the Cole Inquiry began. It chose not to follow that advice but to tough matters out. It made that decision after its own internal enquiries had exposed the Tigris Debt matter.

It then tried to suppress the Sandman advice by claiming privilege. A claim which was bound to fail and which it eventually abandoned. Likewise it brought Federal Court proceedings seeking to suppress the release of hundreds of other documents under a claim of privilege. Claims which were largely abandoned or lost.

Frankly when I appointed to assist the Inquiry I remember discussing with others at the Inquiry what I thought would be the likelihood: AWB would make an approach to the Inquiry and seek to make a public statement expressing its regret for what it had done and seeking some small consideration on the basis that although misguided it had always acted in what it perceived to be the best interests of the Australian wheat farmer.

I imagined that much of the hearings would be taken up with a discussion about the morality of its behaviour and the alternatives to succumbing to the threats of loss of trade that were available. I believed that perhaps in this way some good would come out of such a course as Australia could have the debate about how we expected our corporations to behave when confronted with situations similar to those which confronted AWB executives when they threw their lot in with the Iraqis and gambled AWB's future away.

However instead of this approach we were met with the approach described in the Report by Commissioner Cole. It was this lack of co-operation and head in the sand approach adopted by AWB that assured its demise and the loss of the single desk. To my recollection AWB shares traded at over \$6.00 each just before the Inquiry was

announced and traded for not much above \$2.00 by the time the Inquiry was complete. The principle reason for that in my view was all of a piece with the approach of non-cooperation that was demonstrated in its dealings with the Inquiry.

More than anything else that approach betrayed a corporate culture in which a code of conduct was little more than a soulless mantra mandated by political correctness but devoid of life. The Stock Exchange's Corporate Governance Principles and Best Practice Recommendations might never have existed. If risk management was employed one could be forgiven for concluding that the risks being managed in respect of the wheat trade with Iraq was the risk of being found out. In an environment like this, one cannot expect executives to make the right choices.

What was needed was a culture which valued and rewarded open discussion and promoted a search for a legitimate solution to the problems presented by the Iraqi demands. What was needed was a culture that valued the reputation of AWB and of Australia.

On the most prosaic of levels what was needed was sensible risk management.

John Agius SC

8 September 2011