



The Parliament of the Commonwealth of Australia

**The Wool Services Privatisation  
Bill 2000**

**Report of the  
Senate Rural and Regional Affairs  
and Transport Legislation Committee**

**October 2000**

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Senator Jeannie Ferris	LIB, SA	
Senator Kerry O'Brien	ALP, Tasmania (substituting for Senator Sue Mackay)	
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### *Committee Secretariat*

Mr Andrew Snedden	(Secretary)
Ms Lyn Fairweather	(Research Officer)
Ms Ruth Clark	(Executive Assistant)

The Senate  
Parliament House  
Canberra ACT 2600

Telephone (02) 6277 3510  
Facsimile (02) 6277 5811  
Internet [www.aph.gov.au/senate](http://www.aph.gov.au/senate)  
Email [rrat.sen@aph.gov.au](mailto:rrat.sen@aph.gov.au)



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## **ABBREVIATIONS**

AFFA	Department of Agriculture, Fisheries and Forestry
AWC	Australian Wool Council
AWRAP	Australian Wool Research and Promotion Organisation
IAB	Interim Advisory Board
OASITO	Office of Asset Sales and Information Technology Outsourcing
PGA	West Australian Pastoralists and Graziers Association
R&D	Research and Development
WAG	Woolgrowers Advisory Group

# THE WOOL SERVICES PRIVATISATION BILL 2000

## Background

1.1 On 7 September 2000, the Senate referred the Wool Services Privatisation Bill 2000 to the Senate Rural and Regional Affairs and Transport Committee for inquiry and report by 10 October 2000. The bill provides for the privatisation of the Australian Wool Research and Promotion Organisation (AWRAP) and gives effect to the Commonwealth's announcement on 8 August 2000 that new arrangements were to apply to the Australian wool industry.

1.2 The Commonwealth announced that AWRAP would be converted from a statutory corporation into a Corporations Law company limited by shares, with shares in the new Corporations Law company to be issued to Australian woolgrowers. The Commonwealth also announced that the converted AWRAP would have two main subsidiaries.

1.3 One subsidiary would be responsible for commercial activities, including the commercial development of the Woolmark and its sub-brands and the commercialisation of intellectual property. The other subsidiary would manage the proceeds from the wool levy and outsource research and development and intellectual property management. The new arrangements are proposed to start on 1 January 2000.<sup>1</sup>

1.4 The Committee held public hearings in Canberra on Friday 8 September 2000 and Monday 2 October 2000. An *in camera* session was also conducted as part of the hearing on Monday 2 October 2000. In public hearings the Committee heard submissions from representatives of the Department of Agriculture, Fisheries and Forestry (AFFA), the Office of Asset Sales and Information Technology Outsourcing (OASITO), Interim Advisory Board, Woolgrowers Advisory Group, AWRAP, the West Australian Pastoralists and Graziers Association (PGA), Australian Wool Council and the National Woolgrowers Forum. A list of witnesses at the hearings and written submissions received by the Committee is at Appendix One.

## The Decision to Privatisise AWRAP

1.5 The decision to privatise AWRAP follows a motion of no-confidence passed by wool taxpayers at AWRAP's annual general meeting on 30 November 1998. Following this vote, the Commonwealth established the Wool Industry Future Directions Taskforce (the McLachlin Report) to inquire into the future direction of the wool industry.

1.6 The Taskforce presented its report on 30 June 1999. Although most of its recommendations were addressed to woolgrowers concerning management of their businesses and the wool industry, wool promotion and wool R&D, the report also made three recommendations (recommendations 28-30) which have resulted in the Government's decision to privatise AWRAP.

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1 The Hon Warren Truss MP, Minister for Agriculture, Fisheries and Forestry, *Media Release: New Wool Industry Arrangements Announced*, 8 August 2000

1.7 The recommendations are:

*Recommendation 28*

The Taskforce recommended that the Minister appoint a new interim board of AWRAP with the responsibility of preparing a new organisation the Taskforce called Australian Wool Services (AWS). AWS would be structured as a conventional company in which woolgrowers would become shareholders reflecting their compulsory levy contributions since 1 July 1999.

The new interim board should prepare a business plan/prospectus to be put to a meeting of shareholders no later than 31 March 2001. At that meeting, woolgrower shareholders would vote on whether or not to adopt the plan and continue the company in its existing form.

*Recommendation 29*

The Taskforce recommended that the new AWS adopt a mission statement focussed upon maximising the value of existing wool intellectual property, including the Woolmark symbol, while facilitating wool R&D and innovation on a contestable basis.

*Recommendation 30*

Shares in AWS should be allocated to wool growing businesses on the basis of one share per \$100 of levy paid.<sup>2</sup>

1.8 Following the Taskforce report, on 23 September 1999, the Government announced an eight-point plan implementing the Taskforces' recommendations to convert AWRAP to a new R&D company structure by 1 January 2000. This followed acceptance of the reports recommendations at a meeting of the National Woolgrowers Forum.<sup>3</sup>

1.9 In accordance with the eight-point plan, the Government established the Wool Working Party, which developed a range of business options and a levy proposal that formed the basis for WoolPoll 2000. The decision to privatise AWRAP has been endorsed by the wool industry through WoolPoll 2000. WoolPoll 2000 indicated that the wool industry supported the restructuring of AWRAP and voted overwhelmingly for a two per cent wool levy and the return of direct control to the growers.<sup>4</sup>

### **Privatisation of AWRAP**

1.10 As part of the process for the privatisation of AWRAP, the Government established an Interim Advisory Board (IAB). The intent of the establishment of the IAB is for that

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2 Australian Wool Industry Future Directions Taskforce, *Diversity and Innovation for Australian Wool*, Vol 1, June 1999, p 27

3 The Hon Warren Truss MP, Minister for Agriculture, Fisheries and Forestry, *Media Release: Wool Industry 8 Point Plan*, 23 September 1999

4 Evidence, RRAT, 8 September 2000, p 18



board to remain as the board of the new company once the privatisation process is complete. The Government has also established a Woolgrowers Advisory Group (WAG) to act as an interface between the IAB and government organisations, primarily, the Office of Asset Sales and IT Outsourcing.<sup>5</sup>

### *Subsidiaries*

1.11 The new Corporations Law Company, AWS, will initially have two subsidiaries. The first subsidiary, Commercial Co, will incorporate the business of the Woolmark Company and its sub-brands. The second subsidiary, R&D Fund Co, will manage the proceeds from the new wool levy, research and development and intellectual property.

1.12 Mr Paul Sutton, General Manager, Wool and Dairy from the Department of Agriculture, Fisheries and Forestry (AFFA), indicated to the Committee that work is currently being done to develop a shareholder register to determine woolgrower eligibility for shares in AWS. He also indicated that the drafting and development of constitutions for the three companies and a funding contract - transferring Commonwealth funding to the new companies is being undertaken. This process has involved close coordination between the Commonwealth, the IAB, WAG and AWRAP.<sup>6</sup>

### *Shareholder Register*

The Committee notes that eligibility for shares in AWS will be based on woolgrowers tax payments over the last three years to 30 June 2000.<sup>7</sup> Shares and voting entitlements will be allocated for each \$100 of wool tax paid.<sup>8</sup>

1.13 The process in establishing the register will involve voluntary registration by the woolgrowers, who will then need to be able to demonstrate eligibility by substantiating their levy payments over the past three years. This process will involve the drafting of documentation informing woolgrowers of the opportunity to register for shares. Mr Rod Price, the Chairman of the IAB, indicated to the Committee that an information kit explaining the new corporate structure and required documentation to be registered as an eligible shareholder would be sent to woolgrowers in early October.<sup>9</sup>

1.14 On 4 October 2000, the Minister for Agriculture, Fisheries and Forestry, the Hon Warren Truss MP, announced that a Share Registration Kit would be mailed to woolgrowers and brokers from Monday, 9 October 2000. The kits contain information relating to the structure of AWS and a Share Registration Form to be returned by 30 November 2000.<sup>10</sup>

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5 Evidence, RRAT, 8 September 2000, p 3

6 Evidence, RRAT, 8 September 2000, p 4

7 Evidence, RRAT, 8 September 2000, p 4

8 The Hon Warren Truss MP, Minister for Agriculture, Fisheries and Forestry, *Joint Media Statement: Share Registration Kits Unveiled for Woolgrowers*, 4 October 2000

9 Evidence, RRAT, 8 September 2000 p 6-7, 18

10 The Hon Warren Truss MP, Minister for Agriculture, Fisheries and Forestry, *Joint Media Statement: Share Registration Kits Unveiled for Woolgrowers*, 4 October 2000

1.15 It is intended that the processing of share applications will be undertaken by a share registry firm, appointed by AWRAP, to become the share registry for the privatised company. The share registry will have ongoing work in maintaining the register as woolgrowers leave and new shareholders join the register.<sup>11</sup>

1.16 The Committee raised with Mr Sutton from AFFA, the issue of not using the WoolPoll process in developing the share register. Mr Sutton argued that, although WoolPoll was a similar process, the legal process involved in transferring ownership to shareholders was a more comprehensive and formal process:

The Commonwealth cannot just give a major asset away to 30 per cent of the wool industry; there has to be an opportunity for anyone who has paid wool tax to register their interest and desire to hold shares and for that information to be tested, to be audited and for the government to be satisfied that due process has been undertaken in passing across an asset which hopefully will have substantial value into the future.<sup>12</sup>

1.17 The next stage of the plan involves the presentation of a list of eligible wool taxpayers to the Minister in early to mid December 2000. Should the Minister agree that the list is satisfactory, that list will form the basis of the register for the new company. Mr Sutton emphasised that, should the list not be ready in time for 1 January 2001, the bill provides for the delay of the start up date to a later date by proclamation. In discussion, the Committee noted the enormity of the task in constructing the share register.<sup>13</sup>

1.18 As with the two subsidiaries of AWS, two identical share registers, class A and class B, will initially be established. They will be identical in content and number, but the number of shares granted will differ based on status. Class A shares will provide individual wool tax payers one share issue with the number of votes being related to wool tax payments made over a three year period to 30 June 2000. The votes can be used in relation to board decisions and activities of the subsidiary R&D Fund Co.<sup>14</sup>

1.19 Class B shares will differ from the class A shares by remaining frozen. The class B shareholder list will reflect the historical wool tax payments linked to the subsidiary Commercial Co. Class B shares will remain frozen unless shareholders elect to trade in their shares or the board of the new company chooses to issue new shares and increase or change its shareholding. The Government link would then move away from AWS to R&D Fund Co with Commercial Co operating as a separate entity.<sup>15</sup>

#### *Estimated Costs of Share Register*

1.20 Mr Gerry Smith from AFFA, indicated that the estimated cost of establishing the share register would be up to \$800,000. The estimated costs of developing the share register includes the drafting of documentation to be sent to woolgrowers, mailing costs, proceeding

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11 Evidence, RRAT, 8 September 2000, p 6-7

12 Evidence, RRAT, 8 September 2000, p 5

13 Evidence, RRAT, 8 September 2000, p 4

14 Evidence, RRAT, 8 September 2000, p 4

15 Evidence, RRAT, 8 September 2000, p 4

and processing of applications by the share registry. Mr Sutton from AFFA, argued that the decision to establish the register by using a voluntary registration process rather than the alternative, a comprehensive register, is expected to substantially reduce its cost.<sup>16</sup>

1.21 The Committee notes concerns that woolgrowers would have to pay for all privatisation costs. Mr Yarra from the Office of Asset Sales and IT Outsourcing (OASITO) indicated the costs associated with the share registry would come from the grants that are incorporated with AWRAP's funding:

It will cost us money to put a grower on the list. But once they become an owner of the company via their shareholding, it will cost that grower, through their company, to continue to maintain the list and for the company to function.<sup>17</sup>

### *Staffing of AWS*

1.22 As part of the privatisation process, the Taskforce recommended that 'there be a spill of all staff positions'. Although acknowledging that key staff will contribute to the value of the new company and a number of existing employees would likely be offered employment in AWS, this recommendation aims to ensure that necessary 'cultural' changes occur. In addition to initiating cultural changes, the Taskforce's recommendation to have a spill of staff reiterates its view that nothing, including employment for AWRAP employees should be guaranteed, and that the terms and conditions of employment may be different in the new company.<sup>18</sup>

1.23 Concerns were raised with Mr Price from the IAB that AWRAP staff will be transferred to the new company with the same comparable terms and conditions of employment, contrary to the Taskforces' recommendation and previous assurances that all positions in the new company would be contestable.

1.24 In response, Mr Price argued that a spill of positions was not 'practicable either financially or in terms of running the business'. He claimed that redundancy payments of up to \$40 million to employees would be financially disastrous for woolgrowers. Mr Price also argued that an international business like the Woolmark Company could not cease operations to employ new staff. He stated that there has already been a dramatic reduction in staff with further reductions planned.<sup>19</sup>

1.25 Senator Ferris mentioned this concern about the transfer of current staff to the new company with Mr Wolfenden from Wool Council Australia. Mr Wolfenden responded that termination of all employees would place an unnecessary financial burden on the company:

We endorse the approach that the IAB are taking to find an efficient commercial outcome for the transfer of staff from the old organisation to the new. We do not believe that this would be best reached by having a mass termination and re-employment and that the new company could be put in some jeopardy of extra cost

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16 Evidence, RRAT, 8 September 2000, p 6-8

17 Evidence, RRAT, 8 September 2000, p 8

18 Australian Wool Industry Future Directions Taskforce, *Diversity and Innovation for Australian Wool*, Vol 1, June 1999, p 29

19 Evidence, RRAT, 8 September 2000, p 24

if that were to happen. So, in fact, we quite strongly support that the staff are transferred in a commercial manner and at as low a cost to the new company as possible.<sup>20</sup>

1.26 Senator Sandy Macdonald further clarified the issue by quoting the taskforce's comments:

In 7.3, it says that one vital requirement to ensure the necessary cultural change occurs is that there be a spill of all staff positions. A number of existing employees would likely be offered employment in Australian Wool Services. Indeed, much of the value of the new companies will reflect the human capital of key staff. However, nothing should be automatic or guaranteed and the terms and conditions of employment may be different.<sup>21</sup>

**1.27 The Committee recommends to the new board and management of Australian Wool Services that all positions be made contestable within the first twelve months of the life of the new company. This would provide the accountability and discipline required to drive the necessary cultural changes for the new company to become a dynamic player in the future of the wool industry.**

#### *Commonwealth Funding and Wool Industry Levy Arrangements*

1.28 Under previous arrangements, AWRAP has been responsible for the management of R&D funding through the *Australian Wool Research and Promotion Organisation Act 1993*. This act was recently amended by the *Australian Wool Research and Promotion Organisation Amendment (Funding and Wool Tax) Act 2000*, to reflect the requirement for AWRAP to financially assist during any privatisation process.

1.29 Funding for AWRAP's expenditure on R&D is currently provided through a compulsory industry levy. Since the commencement of the compulsory levy in 1936-37, woolgrowers have contributed \$309 million for R&D. The Commonwealth has contributed \$342 million. More recently, the Commonwealth has contributed a matching R&D contribution to rural R&D corporations. The Commonwealth contribution has totalled up to 0.5 percent of the gross value of production.<sup>22</sup>

1.30 The new arrangements for the collection of the wool levy will be made under the *Primary Industries Levies and Charges Collection Act 1991*. The Department of Agriculture, Fisheries and Forestry will administer the collection of the levy. The process of collection will transfer the levy into consolidated revenue and will be appropriated through the department to the new company.<sup>23</sup>

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20 Evidence, RRAT, 2 October 2000, pp 43, 47

21 Evidence, RRAT, 2 October 2000, pp 47, 51

22 Australian Wool Industry Future Directions Taskforce, *Diversity and Innovation for Australian Wool*, Vol 2, June 1999, p 99

23 Evidence, RRAT, 8 September 2000, p 5

1.31 The Commonwealth will appropriate funding of \$11million annually to R&D Co for the operation of research and development in the wool industry.<sup>24</sup>

1.32 To ensure transparency of this process, a contractual arrangement will exist between the Commonwealth and R&D Co. The arrangement will allow the Commonwealth to withhold funding and will also detail company obligations in terms of reporting accountability to levy payers. In accordance with their reporting obligations, the board will be required to produce a half yearly report for shareholders.<sup>25</sup>

1.33 Additionally, as a primary accountability mechanism, the company can be subject to Corporations Law sanctions initiated by shareholders at meetings. Along with the secondary accountability mechanism of the Minister and parliament being able to withhold funds, shareholders should be adequately protected should the company not comply with their legislative requirements and contract.<sup>26</sup>

#### *The Constitutions of AWS, Commercial Co and R&D Co*

1.34 The constitutions for the three new companies are currently being developed. Mr Nicholls from WAG confirmed that draft constitutions had been completed with final drafts expected to be available in the next three to four weeks.<sup>27</sup>

#### **Cape Wools South Africa**

1.35 During hearings, the Committee raised with all witnesses public concern regarding involvement of Cape Wools South Africa in the Woolmark Company. The Committee's concern relates to the contractual arrangements relating to the proposed exit of Cape Wools from Woolmark alluded to (though not specifically described) in AWRAP's 1998-99 Annual Report; the cost of these arrangements to wool tax payers; and, the lack of disclosure to woolgrowers about the disposal of Cape Wools and potential cost associated with its exit.

1.36 The issue of Cape Wools arises from South African Wool Board and Cape Wools membership of the International Wool Secretariat, now AWRAP. AWRAP's 1998-99 Annual Report states that Cape Wools withdrew its membership and had transferred documents returning 20,000 shares to AWRAP.<sup>28</sup>

1.37 Mr Price informed the Committee that AWRAP is currently negotiating with Cape Wools to finalise existing contractual arrangements. He further advised that Cape Wools interest may result in AWRAP paying for the value of 'certain intellectual property'. Mr Price emphasised that the value of Cape Wools' interest has not yet been agreed by the parties, but that publicly reported estimates of any proposed payment to Cape Wools was a 'gross exaggeration and entirely unrealistic'.<sup>29</sup>

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24 Evidence, RRAT, 8 September, p 14

25 Evidence, RRAT, 8 September, p 14, 33

26 Evidence, RRAT, 8 September, p 14

27 Evidence, RRAT, 2 October 2000, p 59

28 Evidence, RRAT, 8 September 2000, p 11, 18

29 Evidence, RRAT, 8 September 2000, p 18

1.38 The Committee was told that, as part of current negotiations, one option being considered is for Cape Wools to retain equity in the Commercial Co subsidiary of the new AWS. This should provide a more advantageous outcome for AWRAP and the Australian wool industry in general. This arrangement would ensure that Cape Wools shared the future risks and rewards with other shareholders and may result in Cape Wools contributing to the R&D levy and funding R&D projects.<sup>30</sup>

1.39 The Committee raised particular concerns as to the extent of the knowledge woolgrowers have about Cape Wools' interest in the Woolmark Company. In particular, issues relating to Woolgrowers awareness during the WoolPoll 2000 timeframe and the level of disclosure in AWRAP's 1998-99 Annual Report were raised.<sup>31</sup>

1.40 The Committee raised these issues with Mr Sherlock from AWRAP who argued that at the time the Annual Report was published, negotiations with Cape Wools were in an early stage and any disclosure of details would have been misleading. In addition, Mr Sherlock advised that during WoolPoll 2000, indications to AWRAP were that any exit payment to Cape Wools was not a 'significantly material figure'.<sup>32</sup>

1.41 However, Mr Michael Nicholls representing WAG, argued that he did not believe that any woolgrower was aware of the extent of Cape Wools' interest in the Woolmark Company or of the potential impact this may have on the privatisation and restructuring process. Additionally, he stated that it was an issue that should have been known to woolgrowers during WoolPoll 2000.<sup>33</sup>

1.42 During the hearings, discussions with witnesses concerning any potential liability to Cape Wools were subject to a confidentiality agreement between AWRAP and Cape Wools.<sup>34</sup> The Committee notes that those issues were addressed during an *in camera* hearing on Monday, 2 October 2000 in Canberra.

1.43 AWRAP have provided a written chronology of the decisions and events relating to AWRAP's contacts with Cape Wools. (The chronology is at Appendix 2).

#### *Contingent Liability*

1.44 During hearings on 2 October, the Committee raised with Mr Sutton from AFFA their concerns that payment of monies to Cape Wools may be a contingent liability. In particular, neither woolgrowers nor the Committee know the value of any liability and who is responsible for payment should a contingent liability be realised. Mr Sutton responded that, as part of the incorporation of IWS, a contingent liability will be passed to the new company. He referred to advice received by the Australian Government Solicitor. (This advice is at Appendix 3).

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30 Evidence, RRAT, 8 September 2000, p 18, 20

31 Evidence, RRAT, 8 September 2000, p 27-29

32 Evidence, RRAT, 8 September 2000, p 28

33 Evidence, RRAT, 8 September 2000, p 21

34 Evidence, RRAT, 8 September 2000, p 27

1.45 Mr David Yarra from OASITO stated that the bill explicitly states the Government will not be liable for any AWRAP contingent liability once the company is converted from a statutory authority to a Corporations Law company.<sup>35</sup>

1.46 The Committee also raised this lack of knowledge with Mr Wolfenden from the Australian Wool Council as to any potential liability to Cape Wools. In response, Mr Wolfenden argued that woolgrower groups supported the current negotiation process, and that woolgrower support for the privatisation continues. In making this assessment, Mr Wolfenden stated that the Wool Council continues to monitor the opinions of representatives that attend the forum. Further, the Council is monitoring woolgrower responses to the situation in the media.<sup>36</sup>

1.47 Mr Wolfenden also argued that whatever the outcome of the Cape Wools issue, the privatisation of R&D Co should not be affected. He stated that 'the privatisation has to go ahead for the benefit of the R&D FundCo, and that its operations should not be affected by this at all'. He also stated that the Wool Council had requested a statement from AWRAP and the IAB as to the impact the Cape Wools issue may have on Commercial Co. Mr Wolfenden acknowledged that the sensitivity of the negotiation process was such that it prevented woolgrower groups from knowing full details of the issue, noting that the AWC will review the final outcome when details are released.<sup>37</sup>

#### *Other Industry Concerns*

1.48 The Committee is aware of concern amongst woolgrowers that the process leading to the privatisation of AWRAP since the vote of no confidence in 1998, has taken a long time. Woolgrowers are also concerned with the costs associated with the restructure and in particular, the expectation that the wool industry will bear all the costs.<sup>38</sup>

1.49 Mr Connors, representing the Pastoralists and Graziers Association (PGA), identified three concerns relating to the privatisation legislation. Firstly, the lack of an available constitution raises concerns about the setting of the levy. Mr Connors argued that the constitution should specify that when the board conducts the levy review and ballot every three years, one option should be a zero levy rate.<sup>39</sup>

**1.50** Other concerns relate to the division of AWS into R&D Co and Commercial Co. Mr Connors argued that it should be a requirement for there to be two separate boards within AWS to ensure the correct utilisation of the levy funds for R&D and not for R&D innovation and management. He also emphasised that any funding of a woolgrower representative body must be prohibited by the constitution.<sup>40</sup> **The Committee recommends that the Bill be amended to provide that any funding of a woolgrower representative body be prohibited by the constitution of the new company.**

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35 Evidence, RRAT, 2 October 2000, p 69

36 Evidence, RRAT, 2 October 2000, p 44

37 Evidence, RRAT, 2 October 2000, p 44, 46

38 Evidence, RRAT, 8 September 2000, p 18-19

39 Evidence, RRAT, 8 September 2000, p 35

40 Evidence RRAT, 8 September 2000, p 35

1.51 In a submission to the Committee, Mr Junior D Small requested on behalf of Christian woolgrowers that a provision for a ‘conscience’ clause be incorporated in the Wool Services Privatisation Bill 2000. Such a ‘conscience’ clause would enable interested woolgrowers to pay a levy toward R&D, but refuse any shareholding or partnership involvement.<sup>41</sup> **The Committee recommends that a ‘conscience’ clause be inserted in the Bill to enable interested woolgrowers to pay a levy toward R&D, but refuse any shareholding or partnership involvement.**

1.52 Mr Peter Laird representing the National Wool Forum argued that fellmongered and chemically harvested wool should be included in legislation to capture additional R&D levy payments. The Committee was informed that only ‘shorn wool’ is covered by the current legislation for the purposes of wool levy payments. The consequence of this is that wool producers who harvest wool chemically are not subjected to a wool tax, but receive ongoing benefits through the R&D funding extended to the wool industry.<sup>42</sup> **The Committee recommends that the Bill be amended to provide that the definition of shorn wool be amended to include harvested wool.**

### **Committee Conclusions on the Bill**

1.53 Whether or not the contingent liability to Cape Wools is resolved before 1 January 2001 is not a overriding consideration in the Committees view with respect to this legislation. At this time with a) improvement in the wool world market and b) world production falling below demand, there should be no postponement or delay in passage of the Bill because of changing economic circumstances for woolgrowers.

1.54 In addition, an opportunity to develop better wool production and marketing methods for the industry must be followed up. Subject to amendments one to three, the Committee recommends that the Bill be passed.

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41 Submission, Mr Junior D Small, 2 October 2000

42 Evidence, RRAT, 2 October 2000, p 43



## **COMMITTEE RECOMMENDATIONS – SUMMARY**

### **Recommendation 1**

**The Committee recommends to the new board and management of Australian Wool Services that all positions be made contestable within the first twelve months of the life of the new company. This would provide the accountability and discipline required to drive the necessary cultural changes for the new company to become a dynamic player in the future of the wool industry.**

### **Recommendation 2**

**The Committee recommends that the Bill be amended to provide that any funding of a woolgrower representative body be prohibited by the constitution of the new company.**

### **Recommendation 3**

**The Committee recommends that a ‘conscience’ clause be inserted in the Bill to enable interested woolgrowers to pay a levy toward R&D, but refuse any shareholding or partnership involvement.**

### **Recommendation 4**

**The Committee recommends that the Bill be amended to provide that the definition of shorn wool be amended to include harvested wool.**

**Senator Winston Crane  
Chairman**



# APPENDIX ONE

## SUBMISSIONS AND WITNESSES

### List of Submissions

1. The Pastoralists and Graziers Association
2. PriceWaterhouseCoopers Legal
3. Mr Junior D Small

### List of Witnesses

#### Department of Agriculture, Fisheries and Forestry

Mr Paul Sutton, General Manager, Wool and Dairy

Mr Gerry Smith, Manager, Wool Section

Mr Tim Roseby, Executive Manager, Agricultural Industries

#### Office of Asset Sales and IT Outsourcing

Mr David Yarra, Executive Director

Mr Paul McNamara, Director

#### The Interim Advisory Board

Mr Rod Price, Chairman

#### The Woolgrowers Advisory Group

Mr Michael Nicholls, Member

Mr Tony Gooch, Member

#### The Australian Wool Research and Promotion Organisation

Mr Tony Sherlock, Chairman

#### The West Australian Pastoralists and Graziers Association

Mr Ron Connors, Wool Director

#### The Wool Council of Australia

Mr David Wolfenden, President

Mr Brian Plain, Executive Director

#### The National Woolgrowers Forum

Mr Peter Laird, Chairman



## **APPENDIX TWO**

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## Rural and Regional Affairs and Transport Legislation Committee

### *Questions placed on notice at the Wool Services Privatisation Bill 2000 Public Hearing - Friday, 8 September 2000*

*Senator Forshaw: I would like a written chronology of the decisions made and what happened throughout this period, commencing with the involvement of Cape Wools.*

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## AWRAP AND CAPE WOOLS

### CHRONOLOGY

**November 1996** Letter dated 11 November from the AWRAP Chairman, (the Chairman) Mr. Alec Morrison, to the Hon. J. Anderson MP, Minister for Primary Industries & Energy (the Minister) which signals that AWRAP Board will be bringing forward a fully researched proposal to incorporate IWS as a company limited by shares and guarantee

Arthur Robinson & Hedderwicks re-draft the Memorandum, Articles and Members Agreement for IWS International Pty Ltd removing NZWB and SUL as parties (draft dated 19 and 29 November 1996). Paper entitled "*IWS Incorporation* " (draft for discussion purposes) sent to the South African Wool Board (now Cape Wools) together with drafts of Memorandum Articles and Members Agreement.

**November 1996** The Chairman writes to the Minister a letter dated 25 November 1996, AWRAP wishes to begin the procedural steps to incorporate IWS in Australia - necessary to obtain Ministerial approval. Brief description of the process.

At the AWRAP Board Meeting of 11 December 1996 the Board received a paper entitled "*IWS Incorporation* " and agreed that the principle of incorporating IWS and the proposal for incorporation as outlined in the paper be approved.

**January 1997** Letter dated 3 January 1997 from the Minister to the Chairman replying to **the Chairman's** letter of 25 November 1996 setting out proposal to incorporate IWS. Competitive neutrality issues raised by the Minister.

**February** AWRAP Board Meeting held on 6 February in conjunction with

**1997** the IWS Board Meeting. The Board received an Information Paper entitled "*Managing Director's Report*" which notes that discussions were continuing with SAWB and there were still some matters requiring resolution. The Managing Director, Mr. Adrian J. Kloeden, gives a verbal progress report. Board advised there had been protracted negotiations with SAWB and SUL on the Memorandum, Articles and Members Agreement. There were a number of matters agreed to in summary including voting control and shareholding.

On the question of ascribing a value for Woolmark in the Members Agreement it had been agreed in discussions between SAWB and AWRAP that provision in the Agreement should be made for the Woolmark (and Woolblendmark) to be valued by an internationally recognised firm of valuers. SAWB would be entitled to a percentage of the value calculated by reference to the historic funding of the Woolmark by the Contributing Boards since its inception in 1965. The Board ratified the agreements that had been negotiated to date.

By letter dated 11 February to the Minister, the Chairman reports on the AWRAP and IWS Meetings earlier that month. The Chairman reports amongst other things that the process for independent valuation of Woolmark in the future was agreed and Australia has an option over South Africa's shares. In the event of this being exercised which in (the Chairman's) view could happen in 2 to 3 years South Africa's share of value will be based on historical funding share of 8 to 10% and not on shareholding. Uruguay will become an associate member, not a shareholder and will buy services and information from IWS on a commercial contractual basis. The aim remains to achieve incorporation in July 1997.

On 20 February Lindsay Maxted and John Batchelor of KPMG Corporate Finance met with the Managing Director at Wool House.

By letter dated 24 February Mr J Vella, Director KPMG Finance wrote to the Managing Director and confirmed the request to prepare an "indicative valuation of intangible assets".

Final report dated 13 March from KPMG signed by J Vella, Director, under cover of a handwritten note from J Batchelor. KPMG opinion was "that the indicative combined fair market value of the Marks based on net present value of marginal cash flows methodology is in the range of nil to 11.6 million".

**April 1997** AWRAP Board meeting held on 7 April. The Board received an Information Paper "*Incorporation Progress Report*". Negotiations with SAWB had reached agreement on shareholding, voting and board representation.



The Managing Director tabled the indicative valuation Report dated 13 March 1997 received from KPMG. Stressed that the indicative Woolmark valuation was provided for the Directors only in the context of due diligence requirements and was treated as being highly confidential.

**May  
1997**

At the AWRAP Board Meeting on 8 May the Board received a paper entitled "*IWS Incorporation* " together with an update on progress with the incorporation and key documents. Amongst the documents was a Summary of Draft Members Agreement prepared by Arthur Robinson & Hedderwicks (ARH) and dated 16.4.97. At that meeting the Board approved the documentation and also resolved to establish a three-member Due Diligence Committee.

The Due Diligence Committee was authorised to consider, approve and where necessary execute final versions of the incorporation documents.

**June  
1997**

The Due Diligence Committee of the AWRAP Board met in Canberra in the Edmund Barton Building on 3 June.

The Due Diligence Committee met. by teleconference on 11 June and the Committee agreed that subject to assurances on funding that AWRAP had reached a satisfactory position with SAWB.

An AWRAP Board meeting was held by teleconference on 13 June. The Board received a paper entitled "*Incorporation of IWS* ". The Board Members attention was drawn to the draft Members Agreement attached to the paper. After considering the documentation the execution of the document including the Members Agreement was approved.

Letter dated 16 June to the Minister from the Chairman seeking approval of IWS International Pty Ltd (now The Woolmark Company) to assume the assets, liabilities and operations of IWS. Under heading "*SAWB Put*

*Option*" the letter draws attention to the clause in the Members Agreement which gives SAWB the right to require AWRAP to buy all of SAWB's shares in the SAWB Subsidiary.

Members Agreement executed on 23 June by AWRAP, SAWB, Wool Foundation International Limited (SAW-B subsidiary) and IWS International Pty Ltd.

The AWRAP Board met by Teleconference on Friday 27 June to be advised of receipt of approval from the Minister whereby the operations, assets and liabilities of the IWS would be assumed by IWS International Pty Ltd.

- June 1997** A Global Restructure Deed executed on 27 June transferred all of IWS' currently held operations, assets and liabilities to IWS International Pty Ltd or its subsidiary Woolmark Europe Limited.
- However, because the IWS office in Paris and the IWS office in Mumbai (Bombay) was registered in the name of IWS the unincorporated association known as IWS would continue in existence until those properties were disposed of.
- September 1997** By letter dated 2 September from Mr. Johan Gieselbach, Managing Director, Cape Wools. to the Managing Director under the letterhead of Cape Wools SA, AWRAP was advised of the Restructuring of the South African Wool Board (SAWB). SAWB officially ceased all operational activities on 31 August. In terms of IWS the Board appointed Cape Wools SA as its successor in title as from 1 September 1997.
- April 1998**  
**1999** By fax dated Friday, 3 April, Cape Wools served The SAWB Subsidiary Notice.
- The Transfer Notice took effect on 30 June 1998 and under the Members Agreement the following, actions had to take place.
- Cape Wools was required by 30 July 1998 to deliver the following documents to AWRAP:
- (a) a share transfer in favour of AWRAP executed by SAWB/Cape Wools as the owner of all the shares in the Guernsey Company known as Wool Foundation International Limited [this is the tax exempt trust company established by SAWB/Cape Wools to hold the 20.000 shares in The Woolmark Company'
  - (b) The share certificate for the shares (in WFIL) to be transferred to AWRAP.
  - (c) An assignment in favour of The Woolmark Company or other entity nominated by AWRAP of any registration of Woolmark and Woolblendmark together with any other documents required to effect that assignment.
- AWRAP was required by the same date (i.e. 30 July 1998) to pay to SAWB/Cape Wools the amounts calculated in accordance with Schedule 2 at the times specified in that Schedule,
- In summary AWRAP was required to pay an amount with respect to:
- (i) Revenue Reserves
  - (ii) Real Property (India, France and UK)
  - (iii) Intellectual Property (Woolmark, Woolblendmark and other IPO

(iv) Moveable Property (motor vehicles, computers, plant and machinery)

in accordance with the method of calculation that appeared in the Schedule.

**May  
1998**

A joint letter of appointment to conduct the Trade Mark valuation dated 27 May 1998 was sent by AWRAP and Cape Wools to KPMG Corporate Finance, Melbourne.

**October  
1998**

On 30 October 1998 KPMG Corporate Finance furnished a 40 page valuation report of intellectual property which produced the following opinion:

“The fair market value of the intellectual property owned by IWS at 30 June 1998, based on the net present value of marginal cash flows methodology is as follows:

- (i) the Certification marks, comprising the Woolmark and Woolblendmark, nil; and
- (ii) the Patents –
  - The Sirospun patent, in the range of AUD\$23,000 to AUD\$24,000
  - The Lintrak patent, in the range of AUD\$323,000 to AUD\$354,000
  - The Almeter patent. in the range of AUD\$65,000 to AUD\$70,000
  - The Disperstat patent in the range of AUD\$24,000 to AUD\$26,000.

**November  
1998**

By letter dated 26 November 1998 from the Sydney firm of solicitors Gillis Delaney Brown. AWRAP received a Notice of Dispute on behalf of Cape Wools.

**November  
1998**

At its Annual General Meeting held on 30 November 1998 registered wool tax payers passed a no confidence motion in the Board of AWRAP and the Minister was obliged under the AWRAP Act to end the terms of all appointments other than the Managing Director and Commonwealth Representative on the Board. The Minister was required under the AWRAP Act to appoint another Chairman of AWRAP within a month from the AGM.

**December  
1998**

By letter dated 3 December 1998 the Secretary of Cape Wools wrote to AWRAP initiating on a "without prejudice," basis negotiations on the value of the intellectual property owned by IWS.

The Minister sent a letter of appointment to Mr Anthony Sherlock dated 18 December 1998 and the formal appointment was made on 5 January 1999.

Mr. Geoff C. Gorrie, Executive Director. Industries Development Group, Department of Agriculture, Fisheries & Forestry, was chosen to

replace Mr. Paul Sutton as the Government Representative on the AWRAP Board from 21 December.

Until sufficient appointments were made to make up a quorum of 5 the Chairman of AWRAP had all the powers of the Board of AWRAP.

- January 1999** At the first Chairman's Meeting held on 20 January 1999 the Chairman received a paper entitled "*South Africa - Exit Arrangements Trade Mark Valuations - Dispute* " which outlined the nature of the problem.
- February 1999** At a meeting with representatives of Cape Wools in Sydney on 19 February 1999 AWRAP was informed that a Writ had been issued in the Supreme Court of Victoria to set aside the valuation by KPMG Corporate Finance and to have the Court value the Woolmark and Woolblendmark.
- February 1999'** At the second Chairman's Meeting held on 22 February 1999 the Chairman received a paper entitled "*South Africa - Exixt Arrangements - Valuation of Trade marks - Notice of Dispute* ",
- After an unsuccessful mediation process in Sydney in March, Cape Wools decided to discontinue the Supreme Court Writ and continue with the Second Trade Mark valuation process set out in Schedule of the Members Agreement.
- April 1999** The Minister appointed on 28 April, Mr. John Priest and Associate Professor Vizard to the Board of AWRAP thereby satisfying the statutory quorum requirement of 5 members.
- June 1999** In June 1999 Cape Wools and AWRAP executed a Settlement Deed which also set out the "*Rules For The Conduct of The Second Trade Mark Valuation Pursuant to Schedule 2 to the Members Agreement*".
- September 1999** On Monday 27 September 1999, AWRAP and Cape Wools signed a joint letter of engagement appointing Mr. Jim Eales of Ernst & Young, London as the second and final trade mark valuer of the Woolmark and Woolblendmark.
- January 2000** Comprehensive written submissions have been submitted by AWRAP Cape Wools to the second trade mark valuer during the period October 1999 to January 2000.
- March 2000** The Second Trade Mark valuer has interviewed senior management of The Woolmark Company in relation to the use of the Marks -those interviews were held in the United Kingdom in March 2000.

**August  
2000**

The Second Trade Mark valuer has also interviewed a representative from Wools of New Zealand regarding the New Zealand Wool Boards attitude to the Woolmark at the time it left IWS,

The Second Trade Mark valuer has indicated he wishes to confer with the parties in Melbourne on 17 and 18 October 2000 to allow final submissions.

After the conference the Second Trade Mark valuer would in accordance with the Rules deliver a draft determination on the value of the Woolmark and Woolblendmark to Cape Wools and AWRAP for comment before the determination becomes final and binding.

Negotiations between AWRAP and Cape Wools with a view to reaching a settlement of this matter have to date been unsuccessful.



## **APPENDIX THREE**

### **CORRESPONDENCE FROM AUSTRALIAN GOVERNMENT SOLICITOR TO AFFA**

This document has been scanned from the original.





AUSTRALIAN  
GOVERNMENT  
SOLICITOR

Our Ref: 2000050441

25 September 2000

Mr Paul Sutton  
General Manager  
Wool and Dairy  
Agriculture, Fisheries and Forestry Australia  
GPO Box 858  
CANBERRA ACT 2601

Dear Mr Sutton

**Corporatisation of the International Wool Secretariat**

1. We refer to your letter of 14 September in which you requested urgent advice about the corporatisation of the International Wool Secretariat (IWS). More particularly, you have asked that we provide advice about the operation of paragraph 7(2)(e) of the *Australian Wool Research and Promotion Organisation Act 1993* (the AWRAP Act) in the context of that corporatisation .

**BACKGROUND**

2. Paragraph 7(2)(e) of the AWRAP Act provides:

(2) Without limiting subsection (1), the Organisation may:

.....

(e) with the written approval of the Minister:

- (i) form, or participate with other persons in the formation of, a company; or
- (ii) acquire, hold or dispose of shares or stock in the capital of, or debentures or other securities of, a company; or
- (iii) enter into a partnership, or arrange for the sharing of profits, with a company.

The IWS was an unincorporated association including the wool bodies of Australia, South Africa, New Zealand and Uruguay until July 1997, when it was incorporated IWS International Pty Limited. The Australian Wool Research and Promotion Organisation (AWRAP) is the major shareholder in IWS International Pty Limited.

3. Prior to the incorporation, AWRAP entered into an agreement (the Members' Agreement) pursuant to which AWRAP agreed to purchase from the South African Wool Board (SAWB) its share in IWS International Pty Limited at a future time should it choose to exit the IWS once it was incorporated. More specifically, AWRAP agreed to acquire all the shares in a SAWB subsidiary company (SAWB Subsidiary) formed for the purpose of holding SAWB's shares in IWS International Pty Limited.

4. Section 7(2)(e) required the Minister to approve the formation of IWS International Pty Limited. The Minister's approval (dated 23 June 1997) also approved the acquisition by AWRAP from SAWB of all the shares in the SAWB Subsidiary if it was ever obliged to do so under the Members' Agreement. Effectively, the Minister's approval was an approval for AWRAP to acquire shares under subparagraph 7(2)(e)(ii) in advance of a possible contingency.

#### **SUMMARY OF ADVICE**

5. In our view, the Minister's approval of the acquisition by AWRAP of shares in the SAWB Subsidiary dated 23 June 1997 is almost certainly a valid approval of the acquisition by **AWRAP** of **those shares**.

#### **ADVICE**

6. The Minister's letter of approval, dated 23 June 1997, stated:

I also approve the proposed acquisition, in accordance with the specific provisions of the Members Agreement dealing with the acquisition of shares held by the South African Wool Board (SAWB), the shares in the SAWB subsidiary which **will** hold the remaining 20,000 shares in IWS International Pty Limited.

At the time the Minister signed the letter there was, of course, no 'proposed acquisition'. However, it was clear that the Members' Agreement imposed on AWRAP an obligation to purchase the shares in SAWB Subsidiary whenever the SAWB chose to elect to exit from IWS International Pty Limited.

7. We understand that the Members' Agreement provides that the price payable by AWRAP for the shares in SAWB Subsidiary is to be calculated by reference to SAWB's notional share of IWS International Pty Limited's assets, including most importantly the Woolmark and other intellectual property, to be independently valued at the time the

option is exercised. This means that the cost of the acquisition was unknown at the time the Minister indicated his approval of the acquisition of the SAWB Subsidiary shares.

8. In these circumstances, the question for present consideration is whether it was possible for the Minister to validly approve, for the purposes of paragraph 7(2)(e) of the AWRAP Act, the acquisition by AWRAP of the SAWB Subsidiary shares when:

- (a) the cost of the acquisition was unknown; and
- (b) the acquisition of those shares was a possibility under the terms of the Membership Agreement, but this was contingent on the exercise of an option by SAVB.

### **Cost of the acquisition**

9. In our view, the fact that the Minister would not have been aware, at the time of giving the approval for the acquisition of the shares in SAWB Subsidiary, of the cost of those shares, is not relevant to a consideration of whether the Minister could approve the acquisition of the shares. The precise purpose for which subparagraph 7(2)(e)(ii) was enacted is not apparent from either the terms of the AWRAP Act itself or from the explanatory materials related to it. There is nothing in the text of the AWRAP Act, however, which suggests that the Minister's power to approve the acquisition of shares in a company can only be exercised if the Minister is aware of the cost of the acquisition. In our view, in many, if not most cases, the precise cost of a share acquisition is unlikely to be known at the time of the approval, for example, because the price of shares which it proposed to acquire are subject to negotiation or market fluctuation.

10. What appears from the words of section 7(2)(e) is that Parliament was concerned to ensure that AWRAP would inform the Minister of acquisition activities which it wanted to enaaae in and obtain the Minister's approval of those activities. While the Minister would undoubtedly consider the financial implications of any relevant acquisition activities, it would, in our view, be reading too much into section 7(2)(e) to say that it limits the Minister's power of approval to circumstances in which the Minister knows the precise cost of the activities. We do not think that Parliament could have intended the section to be read in such a limiting fashion.

### **Contingent acquisition**

11. It is then necessary to consider whether paragraph 7(2)(e) will allow for the granting by the Minister of an approval of an acquisition of shares where the acquisition is contingent on some intervening event which is outside the power of the Minister. In this case, the Minister has approved the acquisition of the shares in SAWB Subsidiary where SAWB elects to exercise its option to exit IWS International Pty Limited, a contingency which is beyond the control of the Minister.

12. While the contrary might be argued, in our view there is nothing in the words or context of paragraph 7(2)(e) which requires that any approval given by a Minister under that paragraph must be immediately operative. It is possible to think of a number of circumstances in which a possible acquisition of shares (or disposal of shares, or other

steps taken under paragraph (e)) might of necessity be contingent on the happening of intervenina events, but where the Minister's approval would need to be sought prior to the intervening event. In our view, a strong implication or express words would need to be found in the Act to limit the express words of section 7(2)(e) so that the Minister could not give an approval on the basis of a contingency. Again, we note that the section is in its terms concerned with ensuring the Minister is appraised of, and able to approve or disapprove, AWRAP's acquisition activities. The grant of an approval which is contingent on a specified event is in no way inconsistent with this function of the section.

13. In the present case, this means that the approval given by the Minister in 1997 to the acquisition by AWRAP of the shares in SAAT Subsidiary in accordance with the Membership Agreement (which effectively means, when SAWB elects to exit IWS International Pty Limited) probably was, and remains, a valid grant of approval under paraaraph 7(2)(e).

14. This advice has been settled by Mr Leo Hardiman, Senior General Counsel. Please do not hesitate to contact us if we can be of further assistance in this matter.

Yours sincerely

Kathryn Graham  
Counsel  
Australian Government Solicitor

Tel: (02) 6250 5788  
Fax: (02) 6250 5915  
E-mail: [kathryn.graham@ags.gov.au](mailto:kathryn.graham@ags.gov.au)

**Corporatisation of the International Wool Secretariat  
25 September 2000**

**RURAL AND REGIONAL AFFAIRS AND TRANSPORT  
LEGISLATION COMMITTEE**

**WOOL SERVICES PRIVATISATION BILL 2000**

**DISSENTING REPORT BY  
SENATORS**

**FORSHAW, O'BRIEN AND WOODLEY**

## THE WOOL SERVICES PRIVATISATION BILL 2000

### DISSENTING REPORT FROM SENATORS FORSHAW, O'BRIEN AND WOODLEY

#### Background

Since 1998 this Committee has undertaken a number of inquiries into the reorganisation of the Australian Wool industry and on each occasion the Committee has sought to clearly identify all the costs of the proposed changes in industry structures to growers.

In December 1998 the Committee undertook an inquiry into the provisions of the Wool International Amendment Bill.<sup>1</sup> The primary purpose of that bill was to freeze the sale of wool from the stockpile by Wool International. The vast majority of growers, and grower organisations, were opposed to the freeze. The cost to woolgrowers of that Government decision was estimated to be in the order of \$20 million.

The Democrats supported the freeze because they believed then, it was in the best interests of the wool industry.

In May 1999 the Committee inquired into the provisions of the Wool International Privatisation Bill.<sup>2</sup> The cost of the conversion of Wool International was approximately \$5 million.

In April 2000 the Committee inquired into the Australian Wool Research and Promotion Organisation Amendment [Funding and Wool Tax] Bill 2000.<sup>3</sup> The Committee was advised that the cost to woolgrowers of the privatisation of AWRAP would be approximately \$23 million.

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<sup>1</sup> On 23 November 1998, the Senate referred the provisions of the Wool International Amendment Bill 1998 to the Rural and Regional Affairs and Transport Legislation Committee for inquiry and report.

<sup>2</sup> On 21 April 1999 the Senate referred the provisions of the Wool International Privatisation Bill 1999 to the Rural and Regional Affairs and Transport Legislation Committee for inquiry and report.

<sup>3</sup> On 8 March the Senate referred the provisions of the Australian Wool Research and Promotion Organisation Amendment [Funding and Wool Tax] Bill 2000 to the Rural and Regional Affairs and Transport Legislation Committee for inquiry and report.

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## **The Decision to Privatisise AWRAP**

The decision to privatise AWRAP followed a successful motion of no confidence in the AWRAP Board on 30 November 1998. That meeting also passed a motion requiring AWRAP to prepare a plan to enable complete commercialisation of the Woolmark company and recommend to the Minister that the wool levy be reduced from 4 percent to 1 percent and be directed solely to research and development.

The then Minister, Mr Vaile, asked for the resignation of all AWRAP Board members and established the Wool Industry Future Directions Taskforce chaired by Mr Ian McLachlan to review the structures for wool marketing and promotion, and research and development.<sup>4</sup>

The Taskforce reported on 30 June 1999.

That Taskforce report identified two key issues: (i) the need to obtain value for money in expenditure on research and development [and promotion], and (ii) the need to put woolgrowers in charge of their industry.

In September 1999 the Minister, Mr Truss, announced an eight-point plan for implementing the Taskforce Report. The plan included the establishment of a wool working party to conduct and report on a vote of woolgrowers regarding their preferred wool levy funding options and associated service models.<sup>5</sup>

In March 2000, the industry voted in favour of a 2 percent levy and the lower range funding options for research and development.

## **Comment**

The Opposition and Australian Democrat Senators support the general thrust of the reform of the Australian wool industry.

## **The Cost of the Privatisation Process**

During the Committee's inquiry on 6 April 2000 into the provisions of the Wool Research and Promotion Organisation Amendment [Funding and Wool Tax] Bill 2000 the Committee questioned witnesses about the cost of the privatisation process.

Senators considered it essential that both the Parliament and woolgrowers knew both the nature and quantum of the costs to be incurred by the process they were being asked to endorse.

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<sup>4</sup> Australian Wool Industry Future Directions Taskforce, Diversity and Innovation for Australian Wool June 1999.

<sup>5</sup> The Hon. Warren Truss MP, Minister for Agriculture, Fisheries and Forestry, Media Release, Wool Industry 8 Point Plan, 23 September 1999.

Despite questioning officers of both the Department of Agriculture, Fisheries and Forestry and the Office of Asset Sales and Information Technology on the matter of costs the Committee was not advised of an unquantified liability to Cape Wools [SA] through its interest in the Woolmark Company.

Cape Wools [SA] was formally the South African Wool Board.

The Committee at a hearing on 8 September 2000 further pursued the matter of costs to the industry incurred by this process. The Committee was provided with a schedule of the costs but at no point during those hearings was the extent of liability to Cape Wools [SA] specified to the Committee. The actual cost of this liability is still yet to be determined.

It is clear from the evidence to the Committee that the vast majority of woolgrowers did not know about the agreement between AWRAP and Cape Wools [SA].

Senator Woodley asked Mr Nicholls, a member of the Wool Advisory Group:

“At the time when the previous legislation was being discussed in this Committee, and debated later in the chamber, were you aware of the South African equity issue and that it could be a further cost?”

Mr Nicholls:

“I think I recall that I read what I would describe as very innocuous wording in last year’s annual report. With the South African issue, I do not believe that any woolgrower – not every woolgrower but effectively any wool grower – was aware of the extent of the possible residual interest by South African wools in the Woolmark Company and I do not believe that wool growers were aware that it could impinge upon the privatisation and restructuring process. I think its materiality was not put in front of wool growers and I am disappointed that it was not put in front of wool growers as and when it was developed.”<sup>6</sup>

Senator Crane also expressed concern that the agreement between AWRAP and Cape Wools [SA] was not brought to the attention of the industry.

He said:

“I think one of the amazing things about this Cape Wools issue, because it did appear last year for the first time, is that no one in the industry, including those of us who do read annual reports, picked it up and questioned it.”

Mr Nicholls stated:

“I believe the wording was designed to ensure that the sensitivity was not detected.”<sup>7</sup>

Senator Ferris described it as “a snow job.”<sup>8</sup>

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<sup>6</sup> RRA&T 21 8 September 2000.

<sup>7</sup> RRA&T 22 8 September 2000.

<sup>8</sup> RRA&T 25 8 September 2000.



Senator Crane said the schedule of unquantifiable liabilities amounted to an open cheque book. He said that he hoped the matter would be resolved before 2 October.<sup>9</sup>

### **Comment**

While AWRAP met its obligation to keep the responsible Minister informed of significant matters to do with its operation it failed to properly inform Australian woolgrowers about its arrangement with Cape Wools [SA].

The circumstances surrounding the arrangements entered into by AWRAP with Cape Wools [SA], and the possible financial implications of these arrangements for growers, only became public when details were leaked.

In particular, the failure of AWRAP to properly disclose the terms of an agreement with Cape Wools [SA] in its Annual Report is of considerable concern.

Successive Ministers also failed to meet their responsibilities to the Parliament by not properly informing Members and Senators of the true state of the Authority as they were obliged to do. Finally departmental officers failed to provide the Committee with details of all costs associated with the privatisation process during the hearings on 6 April.

### **The Role of the Government in the Cape Wools [SA] Arrangements.**

The Government was formally represented on the AWRAP Board when the new membership agreement with the then South African Wool Board was signed in 1997. Mr Alan Smart, Acting Executive Director Agriculture and Forestry Group in the Department of Primary Industries and Energy was the Minister's representative on the Board until 20 July 1997. Mr Paul Sutton who headed the Wool and Dairy Branch of the Department replaced him.

According to the 1997/98 AWRAP Annual Report at that time Mr Sutton was responsible for providing the Minister with policy advice on the Wool industry and the statutory authorities that served it.<sup>10</sup> Mr Sutton was therefore both a member of the AWRAP Board and also the Minister's key policy adviser on matters relating to the operation of AWRAP.

On 16 June 1997 the then Chairman of AWRAP, Mr Alec Morrison wrote to the then Minister, Mr Anderson, seeking approval for IWS International [now the Woolmark Company] to assume the assets liabilities and operations of IWS.<sup>11</sup> The nature of the agreement with Cape Wools [SA] was specifically drawn to the attention of the Minister.

Under the heading "SAWB Put option" the AWRAP letter drew Mr Anderson's attention to the clause in the Members Agreement that gave Cape Wools [SA] the right to require AWRAP to buy all of Cape Wool's shares in the AWRAP subsidiary.

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<sup>9</sup> RRA&T 22 8 September 2000.

<sup>10</sup> Australian Wool Research and Promotion organisation [AWRAP] Annual Report 1997/98 page 64.

<sup>11</sup> AWRAP and Cape Wools Chronology submitted to the RRA & T Committee in response to a question from Senator Forshaw asked during the hearings held on 8 September 2000.

Mr Sutton told the committee:

“What I can say is that there was a very comprehensive submission prepared by the AWRAP Board for the Government’s approval of the whole incorporation process.”<sup>12</sup>

Mr Sutton said the Department had advised the Minister to approve the arrangement and he had done so.<sup>13</sup> The Members Agreement with South Africa was executed on 23 June 1997.<sup>14</sup> The AWRAP Board then met by teleconference on 27 June 1997 and was formally advised that the Minister had approved the arrangement.<sup>15</sup>

The ongoing direct interest of the Government in the Cape Wools [SA] matter was confirmed by Mr Rodney Price, the Chairman of the Interim Advisory Board. Mr Price told the Committee that he was an employee of the Commonwealth.

Senator O’Brien:

“And which corporation do you say employs you?”

Mr Price:

“The Commonwealth.”

Senator O’Brien:

“Is the Commonwealth a party to the agreement?”

Mr Price:

“I think so because they actually own AWRAP.”

Senator O’Brien:

“So the Commonwealth is a party to the Agreement and you are representing the Commonwealth here today and are privy to all the terms of the negotiations regarding settlement with Cape Wools?”

Mr Price:

“Future negotiations, yes; past, no.”

Senator O’Brien:

“I take it is the Interim Advisory Board and AWRAP who are involved in the negotiations, and the Commonwealth?”

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<sup>12</sup> RRA&T 11 Friday 8 September 2000.

<sup>13</sup> RRA&T 11 Friday 8 September 2000.

<sup>14</sup> AWRAP and Cape Wools Chronology.

<sup>15</sup> AWRAP and Cape Wools Chronology.

Mr Price:

“Correct.”<sup>16</sup>

Mr Roseby, Executive Manager, Department of Agriculture, Fisheries and Forestry, also confirmed that at the time of the signing of the Membership Agreement, and during subsequent negotiations, the Government had an ongoing interest in AWRAP but left the management of the relationship between Cape Wools [SA] and AWRAP to properly appointed professional people.<sup>17</sup>

### **Comment**

Successive Ministers have had a personal knowledge of, and on at least one occasion a direct role in, both the terms of the agreement between Cape Wools [SA] and AWRAP and the process followed in an attempt to settle this matter since 1997.

The then Minister, Mr Anderson, had the terms of the Membership Agreement between Cape Wools [SA] and AWRAP specifically drawn to his attention by way of a letter from then Chairman, Mr Morrison, on 16 June 1997.

Mr Anderson formally approved the arrangement.

According to evidence presented to the Committee the Commonwealth continues to be directly represented in the current negotiations with Cape Wools [SA] through Mr Price.

### **The Cape Wools liability**

The Committee was advised by Government officials that the unquantified liability arising out of the Cape Wools [SA] arrangements would be simply transferred to the new Corporations Law company as part of the process of conversion.

Mr Yarra, Executive Director Office of Assets Sales and Information Technology Outsourcing, told the Committee:

“From the Commonwealth’s perspective it is a relatively simple interest, and that is to be sure that the entities that are created are viable and that we know the nature and extent of any residual liabilities – we do not expect there to be residual liabilities for the Commonwealth.”<sup>18</sup>

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<sup>16</sup> RRA&T 19 8 September 2000.

<sup>17</sup> RRA&T 68 2 October 2000.

<sup>18</sup> RRA&T 65 2 October 2000.

Mr Yarra provided a legal opinion that supported the view that there was no legal problem in transferring assets, liabilities or contracts to the new entity.<sup>19</sup> A further opinion was also provided advising that the existence of an unknown contingent liability was not an impediment to the conversion of AWRAP to a Corporations Law company.<sup>20</sup>

However, an opinion prepared by Marcus S. Jacobs QC provided by Price Waterhouse Coopers Legal to the Committee expresses a different view.

Mr Jacobs QC states in part:

“There are serious commercial issues [relating to the conversion of AWRAP] one of which may possibly involve Commonwealth liability notwithstanding the provisions of section 61 of the Australian Wool Research and Promotion Organisation Act 1993 and of which Mr Yarra may not have been aware when he gave evidence before the Committee on 2 October, and when he, at p. 65 of the transcript of that evidence, said that he expected that there would be no residual liabilities of the Commonwealth, when the new legislation was in place.”<sup>21</sup>

### **Comment**

AWRAP, Cape Wools [SA] and their legal advisers Price Waterhouse Coopers Legal gave evidence relating to the Cape Wools liability matter. However, as much of that evidence was presented in camera the Committee is unable to either release the evidence or comment on it, at this stage, beyond expressing concern about the possible financial implications for Australian woolgrowers.

Since the hearings on 2 October 2000 both AWRAP and Cape Wools [SA] have advised that the matter is now the subject of legal action.

Further, given the opinion prepared by Marcus Jacobs QC and provided to the Committee by Price Waterhouse Coopers Legal on behalf of Cape Wools [SA] there remains some unanswered concerns about the possible exposure of the Commonwealth in relation to this matter.

### **The structure of the new Entity**

As has occurred on a number of earlier occasions the Committee has been asked to recommend to the Senate that a bill be passed without having access to related material such as Regulations.

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<sup>19</sup> Letter to Mr Yarra from Arthur Robinson and Hedderwicks dated 9 October 2000.

<sup>20</sup> Letter to Mr Sutton from the Australian Government Solicitor dated 9 October 2000.

<sup>21</sup> Memorandum of Advice from Marcus S. Jacobs QC 10 October 2000.

Senator Forshaw stated:

“The other concern we usually have is that, if we do not have the regulations that will attach to the legislation that poses problems as well because the devil is usually in the detail.”<sup>22</sup>

Senator Crane also referred to the problems faced by the Committee because it has not had all the information it requires to make an informed judgement about the merits of legislation before it. He said, in relation to the Wool Services Privatisation Bill 2000, he hoped that all the information could be made available to the Committee prior to the legislation passing through the Senate.<sup>23</sup>

In addition to the bill the material required by the Committee includes regulations, the constitutions of the new companies and the Deed of Agreement between the Commonwealth and the new company relating to the levy arrangements.

Mr Nicholls told the Committee:

“The constitution, statutory funding agreement and regulations are a complex matrix along with the Bill and one needs to see the totality of that.”

Mr Nicholls said the interplay between those is critically important.<sup>24</sup>

## **Comment**

As has occurred on other occasions the Committee has been asked to recommend to the Senate that an important piece of legislation be passed without first considering all relevant material.

## **Public Accountability for Commonwealth Funds**

The Committee has a clear responsibility to satisfy itself that the accountability arrangements the Government proposes to put in place in relation to its financial contribution to the industry's Research and Development effort are satisfactory.

These accountability arrangements will be spelt out in a contract between the Commonwealth of Australia and R&D FundCo. This contract will enable R&D FundCo to receive the levy funds raised and require it to use those funds in accordance with the purposes for which they were raised and the associated audit process.

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<sup>22</sup> RRA&T 57 2 October 2000.

<sup>23</sup> RRA&T 60 2 October 2000.

<sup>24</sup> RRA&T 55 2 October 2000.

**Comment**

The Committee, and the industry, is yet to consider this matter which will determine the relationship between a private entity and the Commonwealth.

The detail of this contract must be considered by both the Parliament and the Wool industry in conjunction with the passing of this Bill.

**The View of the Wool Industry about the progress of the Bill**

A number of industry representatives told the Committee that it should recommend that the Senate pass the bill. However, the support to progress the bill was not unqualified.

Senator Crane:

“Can I get you to clarify that the legislation should continue during this development process – the 1<sup>st</sup> January date? Is that part of your position?”

Mr Laird:

“Yes.”

Senator O’Brien:

“Unqualified?”

Mr Laird:

“At this point of time, yes.”

Senator O’Brien:

“So it is unqualified even though you do not know what the liability is?”

Mr Wolfenden:

“That is true, and this is why we are heartened by the fact that the Senators here have received a more complete briefing.”

Senator O’Brien:

“I see. So you want us to knock it off, if we think we should. Is that what you are saying?”

Mr Wolfenden:

“Hopefully, you would like to knock it off if you thought the liability to wool growers was totally open ended or what ever it might be.”<sup>25</sup>

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<sup>25</sup> RRA&T 45 2 October 2000.

Senator O'Brien sought to determine what level of exposure would be considered unacceptable to the industry. Mr Wolfenden then requested that that matter be further discussed in camera.

Mr Wolfenden later told the Committee:

“When that liability is more concrete and we know what it is, we then review what outcomes we need at that time.”<sup>26</sup>

### **Comment**

While representatives of the industry told the Committee, in the public hearings, that the bill should be progressed the view put by the Wool Council was less clear.

Further, views expressed during the in camera sessions have not assisted the Committee in this regard.

### **Outstanding Material Requested by the Committee**

During the course of the hearings on this matter the Committee requested material to assist in its deliberations. While some material has been provided a considerable amount is yet to be presented to the Committee.

As referred to earlier the Committee has not yet been provided with copies of the proposed regulations referred to in the bill, the constitutions for the new corporate entities or a copy of the Deed of Agreement between the Commonwealth and the new company.

Mr Price told the Committee that it was his intention to restate the accounts of AWRAP at the end of September. He said this would give the Committee some comfort “in terms of what the financials might look like.”<sup>27</sup>

Mr Sherlock also advised the Committee that he would provide a summary of the issues that related to the matters considered by AWRAP at the time the accounts for the year ending June 2000 were prepared on a confidential basis.<sup>28</sup>

The Committee has also requested a number of other documents identified in the chronology of the relationship between AWRAP and Cape Wools provided to the Committee following a request by Senator Forshaw.

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<sup>26</sup> RRA&T 49 2 October 2000.

<sup>27</sup> RRA&T 61 2 October 2000.

<sup>28</sup> RRA&T 61 2 October 2000.

## **Comment**

Senators Forshaw, O'Brien and Woodley believe Committee requires access to all the above material in order to fully satisfy itself of the implication for the industry and the Australian community of passing this bill.

## **The Timing of the Privatisation of AWRAP**

The Government has set 1 January 2001 as the target date for the privatisation of AWRAP. However there is no reference to that date in the bill. Mr Sutton told the Committee that if the construction of the share register for the new entity was not considered adequate by late December, the Minister would not be in a position to sign off. Mr Sutton said that rather than have to change the legislation the start date or the conversion day would be by proclamation.<sup>29</sup>

## **Other Matters**

The Government Senators have recommended that all staff positions in Australian Wool Services "be made contestable within the first twelve months of the life of the new company."<sup>30</sup>

This Recommendation is based upon a recommendation by the Wool Industry Future Directions Taskforce that "there be a spill of all staff positions" in order to "ensure the necessary cultural change occurs."

Whilst the Opposition and Democrat Senators note the views expressed by Woolgrower organisations and the Taskforce that there needs to be a cultural change in the new company, we also note the evidence from Mr Wolfenden, President Wool Council Australia that any proposal to implement a mass termination of existing employees would be an unnecessary financial burden for the new company.<sup>31</sup>

Further, as the following extract demonstrates, existing employees have legal rights and entitlements that cannot be disregarded in the establishment of a new company:

Senator Forshaw:

"What arrangements have been made with respect to the transfer and/or recruitment of employees to the new entity?"

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<sup>29</sup> RRA&T 4 8 September 2000.

<sup>30</sup> The Wool Services Privatisation Bill 2000. Report of the Senate RRA&T Legislation Committee. October 2000. Page 11.

<sup>31</sup> RRA&T 42/43 2 October 2000.



Mr Yarra:

“The situation, as I understand it, is that the legal personality remains unchanged. The employees continue to be employees so that the day before conversion and the day after conversion nothing changes as far as they are concerned. So the day before conversion and the day after conversion they come to work under the same terms and conditions and under the same arrangements. To the extent that decisions are taken in relation to employees down the track will be a matter for the incoming board as they get their minds around the business, the structure. I presume there will be transfers, for example, of employees from AWS into R&D FundCo because AWS becomes a holding company. But that is all a matter for the board in due course.”<sup>32</sup>

The Labor Senators agree with the comments of Mr Yarra that these are ultimately matters for the future Board of AWS and R & D FundCo to determine.

### **Conclusions and Recommendations**

The general thrust of the restructuring of the administration of the Wool industry’s research and commercial activities that has taken place in recent years is supported. However, in relation to the Wool Services Privatisation Bill 2000, a number of significant issues remain outstanding and these matters must be addressed to ensure that the interests of both the Parliament and the Australian wool industry are properly protected.

The Committee has not yet had an opportunity to consider the proposed Regulations referred to in the bill, constitutions for the new corporate entities or the Deed of Agreement between the Commonwealth and the new company. These documents are an integral part of this final stage of the industry restructure and should be made available to the Committee as a matter of urgency. The Committee was also promised other material to assist this inquiry which has not yet been provided.

The Committee took evidence, much of it in camera, about Cape Wools [SA] and related issues but still has not been provided with any clear indication of the potential liability to Australian woolgrowers flowing from this matter. It is considered essential that both the Parliament and woolgrowers know the level of financial liability before the bill is allowed to proceed.

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<sup>32</sup> RRA&T 28 2 October 2000.

**Recommendation**

It is recommended that the Government not proceed with the Wool Services Privatisation Bill 2000 until:

1. The Committee has considered all relevant material including updated company accounts for AWRAP, reports and correspondence relating to the Cape Wools liability, regulations, company constitutions and the proposed Deed of Agreement between the Commonwealth of Australia and the new company, R&D FundCo.
2. The legal position of the Commonwealth in relation to the Cape Wools liability is clarified.
- 3 The Cape Wools [SA] liability and related matters are clarified.

Senator M Forshaw

Senator K O'Brien

Senator J Woodley

