

Chapter 3

A case for compensation?

3.1 The committee received submissions and heard evidence from two organisations seeking federal government compensation to wheat growers for the US\$98.1 million uninsured portion of the Iraq debt.¹ The committee notes that both are WA-based organisations, although they indicated that they were pursuing compensation for all affected growers. Despite this, there appears to be a regional divide over the issue at a representative level. Except for the Western Australian Farmers' Federation (WAFarmers), all other state farming organisations represented on the Grains Council of Australia (GCA) have supported the GCA's position that the government has fully discharged its responsibilities to wheat growers. WAFarmers disagree with this majority view and have resigned from the GCA.²

Compensation claims

3.2 WAFarmers told the committee that the federal government should settle the Iraq debt in 2005/06:

The WAFarmers proposes that the government should settle the debt due to growers in the 2005/06 financial year. That would bring to an end the claim growers have over the debt. Administering the debt repayment agreement would then be a government-to-government matter between future Australian and Iraqi administrations within the overall Paris Club framework.³

3.3 WAFarmers emphasised to the committee that this claim was for the principal uninsured debt only, offering to forego interest accrued if prompt settlement of the debt occurs.⁴ They also requested that the government fund the costs associated with distributing payments to affected growers.⁵ As to this latter claim, the committee notes that AWB would have met the costs of distributing the funds had Iraq not defaulted on their payments.

3.4 While not calling for the costs of distributing payments to be met by government, the Wheat Growers' Association (WGA) also called for the federal government to meet the US\$98.1 million shortfall in 2005/06. In evidence to the

1 See WAFarmers, *Submission 3* and Wheat Growers Association, *Submission 2*. The WGA represents the interests of AWB Ltd A-class shareholders, but its members are overwhelmingly based in WA.

2 WAFarmers, *Transcript of Evidence*, Perth, 22 February 2005, p. 22

3 WAFarmers, *Submission 3*, p. 14

4 WAFarmers, *Submission 3*, p. 3

5 WAFarmers, *Submission 3*, p. 17

committee, they indicated that this could be made as an advance to AWB Ltd in contemplation of Iraq's eventual scheduled repayments.

3.5 Such a payment would represent approximately US\$56 million in excess of the amount growers will receive under the Paris Club repayment schedule.

3.6 Throughout the inquiry, all organisations agreed that EFIC and the government had discharged its legal responsibilities to AWB and the growers when the insurance payout was made. However, both WAFarmers and the WGA rejected the assertion that growers had relinquished their claim to the outstanding amount after receiving payment from EFIC. The basis for this claim is a moral one: wheat growers had unfairly shouldered the burden of governmental decisions relating to Iraq's wheat trade and subsequent debt to AWB.

Moral obligations of government

The Iraq debt not a commercial default?

3.7 One element of the moral argument for a full payout of Iraq's uninsured debt is the cause of their default. The basis for this is that an uninsured loss borne through a creditor's inability to pay differs from a payment default imposed through political action. The implication is that growers should not be expected to bear a financial loss created by political decisions; this responsibility should rest with the taxpayer, upon whose authority such decisions are taken.

3.8 Therefore, while accepting that no legal obligation existed, WGA argued that:
When a country goes to war, no one section of the community should have to suffer the consequences of it. It should be paid by taxpayers.⁶

3.9 They contended that the source of the government's moral obligation to affected growers is the political, rather than commercial, aspect of the Iraq debt:

... it is really not an issue of commercial failure. This failure has been caused by sanctions being imposed. ... EFIC insurance was taken out in case of failure to pay, not in case of war.⁷

3.10 The WGA further emphasised the political nature of the default by stressing Iraq's willingness to pay:

The Australian wheat industry had been assured repeatedly throughout the Saddam Hussein regime that Iraq had acknowledged the debt and had the capacity to pay, and the only impediment to making payment was the UN sanctions.⁸

6 Wheat Growers' Association, *Transcript of Evidence*, Perth, 22 February 2005, p. 47

7 Wheat Growers' Association, *Transcript of Evidence*, Perth, 22 February 2005, p. 46

8 Wheat Growers' Association, *Submission 2*, p. 2

3.11 WAFarmers also argued that the debt was incurred due to government action and therefore created a moral obligation on the part of the federal government:

Basically, the cheque was stopped from coming because of the UN sanctions. The UN sanctions were not something that the Wheat Board or the farmers at the time would have considered as a commercial risk that they would have needed to be aware was about to happen or that they should have taken out extra insurance cover for.

...

The payments were there, ready to come to us, and we were deprived of them because of the government action.⁹

3.12 AWB Ltd acknowledged the cause of the debt and the previous reliability of Iraqi credit:

The Iraqis had an impeccable payment record. We were long-term suppliers of grain on credit to them, and they always paid on time and were very good on their payment. That was the 1980s and up to the 1990s. As you know, they seized Kuwait on 8 August 1990. Sanctions were imposed. UN sanctions were imposed which effectively froze all their international assets. They lost access to their oil exports and therefore their entire mechanism of being able to pay us was frozen. We lost access to the market in 1990 and we were directed by the government of the day to stop all trade with Iraq and divert all shipments on the water to other destinations.¹⁰

3.13 The committee recognises that despite the Paris Club's decision to forgive 80 per cent of Iraq's debt, the country is highly indebted. In this context, it is questionable that wheat growers could have now been reimbursed, even if the Saddam regime remained and the sanctions had been lifted.

3.14 The committee also notes that Australia's compliance with UN sanctions was not an optional decision for the government at the time, but an obligation under international law. Regardless of Australia's willingness to comply with the sanctions, no payment from Iraq would have been possible. Further, continuing to seek access to the Iraq market during this time would almost certainly have had negative implications for Australia's trade with other nations.

The Paris Club decision an unfair burden?

3.15 Another aspect of the argument for full compensation is that growers have involuntarily forgone their capacity to pursue the debt as a consequence of other government imperatives. Again, this contention by some grower representatives is based on the view that one sector is unfairly shouldering the impact of governmental decision-making.

9 WAFarmers, *Transcript of Evidence*, Perth, 22 February 2005, p. 32

10 AWB Ltd, *Transcript of Evidence*, Canberra, 23 February 2005, p. 4

3.16 Central to this view is that affected growers have been disproportionately impacted by Australia's participation in the Paris Club agreement. WAFarmers argued that:

... the government have now changed the rules. They have, through the Paris Club, forgiven the debt. They are going to receive the further 20 per cent, which they say is now worth approximately \$212 million with back-charges. We are only asking for \$100 million.¹¹

3.17 WAFarmers suggested that EFIC should bear the full weight of the Paris Club agreement, as it reflected governmental priorities:

Technically, of course, Iraq still owed the Australian government because the government were the insurance company. The insurance company probably has a right to go back to the original debt, which they have. But they have chosen in the world's interest to forgive that portion that they paid out to the Australian growers.¹²

3.18 Accordingly, argued WAFarmers, EFIC (as the government funded insurer) should relinquish a proportion of their entitlement to repayment to allow growers to be fully compensated. The committee notes that EFIC is, in fact, entitled to claim all repayments from Iraq, as the government insurer has legal ownership of the Iraq debt. As such, WAFarmers' claim that EFIC has forgone 'their' portion, as opposed to any entitlement to growers, is incorrect.

3.19 AWB Ltd declined to comment on whether a moral obligation to compensate affected growers existed.¹³

3.20 Debt forgiveness was agreed to by the Grains Council of Australia (GCA), the organisation representing Australia's wheat growers.¹⁴ The committee recognises that some growers may consider the level of consultation they had with GCA and AWB Ltd over the Paris Club decision to be inadequate. Issues concerning communication between growers' representatives and affected growers over Iraq debt decisions are discussed in Chapter Four.

3.21 Finally, the committee notes that the Paris Club debt repayment schedule offers scope for a partial debt repayment that may not have otherwise occurred had Australia not participated in this forum. As referred to in paragraph 2.30, the Paris Club agreement dictates that no more favourable debt repayment terms are available through other agreements. Essentially, it is a compromise that represents the best

11 WAFarmers, *Transcript of Evidence*, Perth, 22 February 2005, p. 23

12 WAFarmers, *Transcript of Evidence*, Perth, 22 February 2005, p. 33

13 AWB Ltd, *Transcript of Evidence*, Canberra, 23 February 2005, p. 13

14 GCA's policies are reached after consultation with its six member organisations: Agforce Grains, NSW Farmers, VFF Grains, SAFF Grains, WAFarmers and AWB Ltd.

possible outcome Australian wheat growers could achieve without direct federal government compensation.

Financial loss suffered?

3.22 The final aspect of the moral argument for compensation is that many growers have lost significant amounts of money, diminishing their financial viability. With respect to this, the committee recognises that growers contributing to the relevant pools suffered financial losses as a consequence of Iraq's default (see paragraph 2.2). WAFarmers suggested to the committee that Western Australian growers are owed approximately \$10,000 each, while 'serious wheat growers are owed twice or three times that'.¹⁵

3.23 The committee does not underestimate the impact of the Iraq debt on some growers. However, the financial losses incurred when Iraq defaulted on credit payments from 1987-1990 should not be taken in isolation. The committee is of the view that despite these losses, the federal government's ex-gratia payment, the insurance arrangements provided by EFIC, the premiums extracted from the risky Iraq market and an ongoing wheat trade relationship with Iraq, have probably left Australian growers financially better off than had there been no trade with Iraq at all.

3.24 In a 1993 memo supplied to the committee by the PGA of WA, the GCA deemed the government's \$31 million ex-gratia compensation payment to be a successful outcome:

... the bureaucracy, and indeed, some parliamentarians are still quite amazed at the way in which the Grains Council successfully mounted and executed its strategy for Federal Government compensation for the losses incurred in Iraq to the tune of nearly \$33 million. This is an achievement that should not be understated nor, I suggest, allowed to be forgotten as growers, understandably, focus on potential losses of Pool equity on account of outstanding Iraqi debts.¹⁶

3.25 The GCA memo continued:

Indeed, when you consider that the Government will have, in addition to this compensation, paid out 80% of the total outstanding debt of some US\$483 million (albeit, with the prospect that they too will recover these monies if the sanctions are lifted and we resume wheat trade with Iraq), it is fairly dangerous territory to be charging the Government with having not made a substantial contribution to compensating growers for the losses (and

15 WAFarmers, *Transcript of Evidence*, Perth, 22 February 2005, p. 20

16 Grains Council of Australia memo dated 16 July 1993, p. 5. See PGA of WA evidence, *Transcript of Evidence*, Perth, 22 February 2005, p. 2.

potential) that they have incurred as a consequence of the United Nations sanctions.¹⁷

3.26 Indeed, the insurance cover provided by EFIC to AWB during this period was considered both necessary and beneficial to growers, despite the fact that it had been reduced from 95 to 80 per cent in 1987 (see paragraph 2.10).

3.27 AWB informed the committee that selling wheat to the Iraqi market required credit terms to be offered, which in turn necessitated NIA cover through EFIC: 'Without credit cover, we would not have sold the volumes that we sold to Iraq'.¹⁸

3.28 The PGA of WA argued that the EFIC arrangement was very lucrative for growers:

... wheat growers were actually getting a pretty favourable deal from the government as regards the insurance arrangements which facilitated the wheat board to sell wheat into risky markets. When the creditor actually paid, the growers collected the premium for the risk and when the credit defaulted the taxpayers wore the loss.¹⁹

3.29 In their 1993 memo, the GCA emphasised that the EFIC insurance cover was potentially seen as a subsidy to wheat growers, and that public attempts to recover the remaining debt 'could seriously undermine the nature and coverage of our export credit arrangements'.²⁰

3.30 The PGA of WA reiterated this consideration in evidence to the committee:

The EFIC scheme that was in place at the time was a subsidy for growers, which was very attractive. It was worth walking away from the Iraqi debt to keep that EFIC scheme going.²¹

3.31 The WGA denied that the EFIC arrangements represented special treatment for AWB and growers:

... EFIC insurance is of a character that is specifically to help Australian exporters into markets where other insurance is not available. It is not simply a one-off deal for the wheat industry.²²

17 Grains Council of Australia memo dated 16 July 1993, p. 5. See PGA of WA evidence, *Transcript of Evidence*, Perth, 22 February 2005, p. 2.

18 AWB Ltd, *Transcript of Evidence*, Canberra, 23 February 2005, p. 7

19 Pastoralists' and Graziers' Association of WA, *Transcript of Evidence*, Perth, 22 February 2005, p. 2

20 Grains Council of Australia memo dated 16 July 1993, p. 5. See PGA of WA evidence, *Transcript of Evidence*, Perth, 22 February 2005, p. 2.

21 Pastoralists' and Graziers' Association of WA, *Transcript of Evidence*, Perth, 22 February 2005, p. 7

22 Wheat Growers' Association, *Transcript of Evidence*, Perth, 22 February 2005, p. 56

3.32 The committee is aware that EFIC's National Interest Account (NIA) insurance cover was not available for the exclusive benefit of the wheat industry. However, AWB's insurance cover through EFIC assisted wheat growers significantly, enabling their sole statutory marketer to access the Iraq market underwritten by insurance cover not available on commercial terms.

3.33 The attraction of selling wheat into the Iraqi market was the premium price obtained from selling to that market. While the AWB was reticent to quantify the premium paid by the Iraqis, and other organisations were unable to do so, there was a general consensus that sales to Iraq were made on favourable terms to AWB.

3.34 In evidence to the committee, AWB admitted that selling to Iraq elicited a premium:

[Iraq] was our largest customer at the time. I was happy to put more and more volume into Iraq because of their impeccable payment record and the fact that we were getting good premiums from the market.²³

3.35 However, the WGA disputed this contention also, citing market distortions existing at the time:

... Iraq was a world wheat producer who the US would not contribute EEP to when purchasing grain from the US. So the actual price paid on the day for Australian wheat more closely relates to the world market price rather than to the world's distorted market price when you have to compete against EEP from the US.²⁴

3.36 Regardless of the unfair nature of subsidisation of wheat exports from other countries, Iraq was paying a premium price for Australian wheat. If the distorted wheat price reflects widespread or normal trading conditions, then being able to sell into a market where these distortions do not exist reflects a premium price.

3.37 In evidence, AWB Ltd confirmed to the committee that this premium meant that the overall value of the trading relationship was beneficial to AWB, even taking into account the loss of the uninsured portion.²⁵

3.38 The 1993 GCA memorandum quoted extensively by the PGA reflected this prevailing belief:

... the bottom line is that wheat growers are better off running the gauntlet of incurring the loss of 20% of the total value of the credit sale made at a much higher price than would have otherwise been the case had the sale

23 AWB Ltd, *Transcript of Evidence*, Canberra, 23 February 2005, p. 6

24 Wheat Growers' Association, *Transcript of Evidence*, Perth, 22 February 2005, p. 51. The EEP (Export Enhancement Program) is a US export subsidy program.

25 AWB Ltd, *Transcript of Evidence*, Canberra, 23 February 2005, p. 6

either been made at a lower cash price or sold into an alternative lower priced, less cash preferred paying market.²⁶

3.39 The committee is of the view that although a debt from Iraq remains outstanding, the extent of this loss was mitigated by EFIC's \$US381.2 million insurance payment made on sales at premium prices.

3.40 Wheat growers affected by Iraq's default also benefited by having an existing trade relationship that was able to be maintained and strengthened during the subsequent period. Following the imposition of United Nations (UN) economic sanctions on Iraq in 1990, AWB was able to continue to export wheat to Iraq under the UN Oil for Food (OFF) Program.

3.41 AWB Ltd informed the committee that from 1992-2004 AWB exported approximately 12.5 million tonnes of wheat into Iraq under the UN's OFF Program.²⁷

3.42 The PGA of WA highlighted the long term benefit associated with the imposition of UN sanctions:

Australian wheat growers were initially disadvantaged by the invasion of Iraq but, subsequently, Australia was the sole provider of wheat to Iraq under the food for oil program ... from 1996 so, in fact, the events that led to this situation occurring ultimately benefited the Australian wheat grower.²⁸

3.43 The committee recognises that Australia's wheat trade under the UN's OFF program was founded on the AWB's trade undertaken in previous years. Unfortunately, one aspect of those years was Iraq's default on payments when UN economic sanctions were imposed. Despite this, growers have benefited from AWB's good trade relationship with Iraq, despite the debt outstanding from 1987-1990.

3.44 The committee is of the view that any attempt to approximate the likely wheat sales to Iraq (and growers' incomes) had UN sanctions not been imposed is highly speculative, and not useful.

Distributing payments

3.45 The task of distributing payments to growers that contributed to the wheat pools in the affected seasons will be undertaken by AWB Ltd. The committee notes that this will be difficult and potentially time consuming, whether undertaken in the context of a compensation payment, or as part of Iraq's rescheduled payments through the Paris Club Agreement. Given the time that has passed since the debt was incurred,

26 Grains Council of Australia memo dated 16 July 1993, p. 5. See PGA of WA evidence, *Transcript of Evidence*, Perth, 22 February 2005, p. 2.

27 AWB Ltd, *Submission 4*, p. 10

28 Pastoralists' and Graziers' Association of WA, *Transcript of Evidence*, Perth, 22 February 2005, p. 15

some growers will have moved out of the industry, some may have restructured their business operations and others will have passed away. Although most affected growers will be readily identifiable, a proportion of these will not. Tracking down these growers will potentially become an expensive administrative burden for AWB Ltd.

3.46 AWB Ltd informed the committee in evidence that they maintained the records of growers who delivered to the affected pools but had 'not fully analysed' the costs of the task or how those costs would be disbursed.²⁹ In their submission they stated that the 'process could be difficult, potentially costly and time consuming'.³⁰

3.47 The WGA suggested that the task would be facilitated by the growers themselves:

In a season like we have just had, it is not hard to find people who are owed the money. They put their hands up readily.³¹

3.48 They further stated that many growers were aware of the amount they were individually owed, and that AWB Ltd had the information readily available:

Every grower who makes a telephone call to AWB will be faxed the information within ten minutes.³²

3.49 The committee is concerned that growers who were not affected by the Iraqi default will be expected to contribute to the administrative cost of distributing debt repayments. Accordingly, the committee urges AWB Ltd to ensure that the cost of distributing these payments is equitably attributed to those receiving them. The committee is also of the view that the government should not be required to contribute to this administrative cost.

29 AWB Ltd, *Transcript of Evidence*, Canberra, 23 February 2005, p. 23

30 AWB Ltd, *Submission 4*, p. 8

31 Wheat Growers' Association, *Transcript of Evidence*, Perth, 22 February 2005, p. 55

32 Wheat Growers' Association, *Transcript of Evidence*, Perth, 22 February 2005, p. 62

